VI-VII

# REPRESENTATION IN VIRGINIA

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History is past Politics and Politics are present History—*Freeman*

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VI-VII

# REPRESENTATION IN VIRGINIA

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# PREFACE.

This monograph represents a few chapters of a larger work on the Constitutional History of Virginia, which the writer has in preparation. The investigation has been conducted in an impartial spirit, and with the desire to state truthfully and unreservedly the facts in regard to a special field of our State History which has been overlooked. Only representation in the State Legislature, and not Federal representation, has been here treated. This work shows that the following systems of representation have existed in the State:

(1). Representation by settlements or plantations with no definite number of representatives from each settlement.

(2). Parish and county representation without a fixed number of delegates from either the parishes or counties.

(3). Representation by counties only, two representatives from each county, neither more nor less, whether the counties were large or small.

(4). Representation to the College of William and Mary in accordance with the English custom of allowing representation to the Universities.

(5). Borough representation, granted by the town charters, or by an act of the General Assembly.

(6). From 1830 to 1851, an arbitrary system of representation without a constitutional basis.

(7). Beginning with 1852, another arbitrary system of representation to continue till 1865, when the Legislature should make a reapportionment; but, in case of failure to do so, a plan was provided by which a constitutional basis was to be adopted by the vote of the people.

(8). Representation apportioned by the so-called "Underwood Constitution," and based on the registered voters of 1867, with a provision for reapportionments after every census, but with no constitutional basis for such reapportionments.

(9). Representation apportioned in 1878 and 1891 with reference to population and county boundaries.

A noteworthy fact in regard to the present system of representation is that there is no constitutional basis, and that the General Assembly has the power to adopt plans for each reapportionment.

Throughout this work the attempt has been made to trace the causes and effects of all movements in regard to representation.[1] By this means light is thrown on the internal conditions of Virginia. The different interests of the two great sections, the one east, and the other west, of the Blue Ridge, are shown. The inability to settle upon a satisfactory basis of representation is seen to have been due to the unequal distribution of the slave population between the eastern and western portions of the State. The inequality of representation, from the standpoint of white population, is shown to have produced much discontent in Western Virginia during the period beginning about 1800 and lasting till 1851, and, as a result, the division of the State was often spoken of and discussed. In short, the jealousy existing until 1851 between Eastern and Western Virginia had its origin in the representative system.

The principal sources used in the preparation of this monograph are the Acts of the General Assembly (1619–1891); the Journals of the General Assembly, as many as could be found; the Proceedings and Debates, and the Journals and Documents, of the Constitutional Conventions of 1829–30, of 1850–51, and of 1867–68; and the contemporary newspapers. Other authorities are also cited in the foot-notes.

Thanks are due to Professor H. B. Adams, of the Johns Hopkins University, and to Messrs. W. W. Scott and W. G. Stanard, of the Virginia State Library, for valuable suggestions.

J. A. C. Chandler.

Johns Hopkins University,
Baltimore, Md., *April*, 1896.

[1] To furnish an adequate treatment of the history of representation, I have introduced an account of the several constitutional conventions, detailing at the same time the repeated fights in the Legislature over the convention question. This ought to be of some interest to the present politicians of the State, since the recent Legislature passed, in March, a bill to submit to the voters, in 1897, the question of a convention to amend the present constitution.

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# REPRESENTATION IN VIRGINIA.

## CHAPTER I.

### Introduction.

By a charter dated April 10, 1606, James I authorized the settlement of two colonies in the territory of Virginia. Each colony was to have a resident council of thirteen to govern according to the laws and ordinances constituted by the king. In addition to these, there was to be one supreme council in England having control, under the supervision of the king, of the government of the two colonies.[1] Following this charter, on November 20, 1606, James issued the articles of government for the two colonies.[2] These were the laws by which the colonies were to be governed. James appointed the "Council of Virginia" (the council residing in England), granting it no power or authority except at his pleasure and will. It was simply to have the power to appoint the subordinate councils that were to reside in Virginia, and to give directions for the governing of the same. The king reserved to himself the right to "change, alter, or abolish" the council.

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[1] Hening, I, 57–67. The two colonies are spoken of as "first" and "second." The "first" colony was to be anywhere between 34 and 41 parallels of north latitude, and was placed in the hands of the London Company. It is with this that we are concerned.

[2] Hening, I, 67–75.

The council resident in the colony was granted the right to select annually one of its own members (not being the minister) as president, and to remove him. It also had the right to adopt ordinances for the "better government and peace of the people," provided they in no way had reference to the "life or member" of any party. These ordinances were to remain in force till made void by the king or council in England.

The preceding is a brief summary of the machinery of government under which a colony was established at Jamestown, May 13, 1607. The government was entirely at the mercy of the king, no powers of self-government being delegated to the settlers. The councils in England and Virginia were both restricted in their power of making ordinances. In short, there is no germ of representative government. "The form of government thus provided for the new colony was cumbrous and complicated, the legislative and administrative powers being so distributed between the local council, the crown and Company, as to involve the dangers of delays, uncertainty, conflict and irresponsibility. By the words of the charter, the colonists were invested with the rights of Englishmen; yet, as far as political rights were concerned, there being no security provided by which they could be vindicated, they might often prove to be of no more real value than the parchment on which they were written. However, the government of such an infant colony must of necessity have been for the most part arbitrary; the political rights must for a time have laid in abeyance."[1]

May 23, 1609, James granted a charter[2] organizing the London Company into a corporation. This charter was granted because the colony had not prospered under its former management, and the expense to the Company had been so great, that it applied to the king for an extension of its

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[1] Campbell, *Hist. of Va.*, p. 37.

[2] Another charter had been granted in 1607, but it was simply to enlarge the Council in England. Hening, I, 76–79.

privileges and powers; so the Company was incorporated with stockholders numbering more than six hundred persons and some fifty-six companies: the Company and its successors to be perpetual. A perpetual council, numbering about fifty-two, was established, the king appointing the first members and the treasurer, but afterwards the whole Company was to elect a councillor, or the treasurer, when a vacancy occurred. The Council was authorized to elect all officers for the local government in the colony and to "make, ordain, and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government" for the colony, or "to abrogate, revoke or change" the same.[1] This charter is very noteworthy because it made the Council and Company self-perpetuating, and because the king practically gave up all control over the colony. The powers granted were wide in their scope, and formed the basis for the establishment of representative government in Virginia without recourse to the king.

The London Company now changed the form of government in the colony. The local council was removed, and, instead, the colony was to be ruled by a governor, lieutenant governor and admiral.[2] As yet the colony was not sufficiently populated for a legislative body.[3]

In 1612, James granted a new charter in order to extend the jurisdiction of the London Company over islands within three hundred leagues of the continent.[4] He reaffirmed all the old powers, but, in addition, established a weekly court to be composed of not less than twenty members, to act upon minor matters, and matters requiring immediate attention. But for matters of greater weight and importance, such as the "manner of government," the Company was to hold four General Courts each year. Full power was granted these

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[1] Hening, I, 91.

[2] Stith, *Hist. of Va.*, 101.

[3] The population in 1616 was about 351; in 1618, about 400; but in 1619, over 2,000. Neill, *Lond. Co.*, pp. 111, 181, 410.

[4] Hening, I, 98–100.

courts to establish any form of government for the colony, and to enact laws for its management.

In 1618, the General Court appointed Sir George Yeardley as governor, and gave him a commission for the establishment of a better form of government.[1] The colonists were to be governed as English subjects, and, in order that they might have a voice in the making of their laws, a General Assembly was established.[2] Accordingly, summonses were sent out in the latter part of June, 1619, for the election of burgesses by the people,[3] and the burgesses thus elected met at Jamestown, July 30, 1619.[4] The commission establishing this first legislative body has not been found; but two years later, when Sir Francis Wyatt became governor, the General Court issued a charter which confirmed Yeardley's action.[5] This charter, dated July 24, 1621, with propriety may be called the first American Constitution. It permanently established representative government in Virginia. The government was now (1) a Governor appointed by the Company, (2) a Council of State, to be assistants to the Governor, also appointed by the Company, and (3) a General Assembly in which sat the Governor, Council and Burgesses elected by the people. The General Assembly was to enact the laws for the colony, but the General Court reserved the right to veto its acts.[6]

We have thus briefly stated the steps to representative government, how at first the councils were under the king, and, consequently, the government of the colony was controlled by him; secondly, how, from 1609 to 1612, the control was delegated to the treasurer and council, but this being comparatively a small body was easily influenced by the royal will, and, thirdly, how, after 1612, the management of Virginia

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[1] *McDonald Papers*, I, 135: W. W. Henry, *Va. Mag. of Hist.*, II, 57.
[2] *McDonald Papers*, I, 136. [3] Smith, *Hist. of Va.*, II, 39.
[4] *N. Y. Hist. Coll.*, ser. 2, vol. 3, 329. [5] Hening, I, pp. 110–113.
[6] However, when the government of Virginia should become well organized, "no orders of the Court afterwards shall bind the said colony unless they be ratified in like manner in the General Assemblies." (Charter.)

was in the hands of the General Court. This, being the assembly of the whole Company, was too large to be ruled by the king.[1] In 1619, Virginia was in a prosperous condition, the population had greatly increased, and in order that there might be a form of government "for the greatest benefit and comfort of the people, whereby all injustice, grievances, and oppressions may be prevented and kept off from the colony,"[2] the General Court granted the people a representative government. So the English rights and liberties which James had promised in his first charter, but had never granted, were acquired by the inhabitants of Virginia through the action of the London Company.

[1] This is shown by the fact that Sir Edwin Sandys was elected treasurer in spite of the opposition of James. It is more than probable that James was opposed to representative government for the colony, and that this is one cause of his breach with the London Company. When he was proceeding to revoke the Company's charter, the inhabitants feared that they would lose their assembly, so petitioned the king "that they might still retain the liberty of popular assemblies." The charter was, however, revoked in 1624, and no one can tell what James proposed for Virginia, as he died before he had instituted any other form of government in the colony. Neill, *Lond. Co.*, pp. 177 and 185: Cooke, *Hist. of Va.*, pp. 118, and 129–133.

[2] Hening, I, 110.

## CHAPTER II.

### Representation in the Colonial Period and under the Constitution of 1776.

In the General Assembly of 1619 there were two burgesses from each borough, plantation, or settlement. With these sat the Governor and Council of State.[1] For this organization there remain no written instructions, but the "Ordinance and Constitution" of 1621 contains this basis.[2] The Council sat with the Burgesses as one legislative body till 1680, after which time it sat apart as an upper house, having only the power to approve or to reject the proposals of the Burgesses,

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[1] *N. Y. Hist. Soc. Coll.*, ser. 2, vol. 3, p. 329; Campbell, p. 139; W. W. Henry, *Va. Hist. Mag.*, vol. II, p. 57, *et seq.*; Neill, *London Co.*, p. 139; *McDonald Papers* (MS.), vol. I, pp. 5–6. The eleven plantations and their representatives are as follows:

(1) James City: William Powell and William Spence.
(2) Charles City: Samuel Sharp and Samuel Jordan.
(3) City of Henrico: Thomas Dowse and John Polentine.
(4) Kiccowtan (Hampton): William Tucker and William Capp.
(5) Martin Brandon: Thomas Davis and Robert Stacy.
(6) Smythe's Hundred: Thomas Graves and Walter Shelley.
(7) Martin's Hundred: John Boys and John Jackson.
(8) Argall's Gifte: Thomas Pawlett and Mr. Gourgaing.
(9) Lawne's Plantation: Christopher Lawne and Ensign Washer.
(10) Ward's Plantation: Captain Ward and Lieutenant Gibbes.
(11) Flowerdieu Hundred: Ensign Rossingham and Mr. Jefferson.

[2] Hening, I, 111. The Governor was to call once yearly and no oftener, unless in matters of great importance, an assembly to consist of the "Council of State and two burgesses out of every town, hundred, or other particular plantation, to be respectively chosen by the inhabitants."

and no power to initiate legislation.[1] The Assembly was not called "once yearly" in accordance with the ordinance of 1621, but only at the pleasure of the governor, who had the power to prorogue or dissolve the Assembly, and to issue writs for new elections.[2] The Assembly met quite frequently, however, there being, from 1619 to 1776, about one hundred and twenty-one sessions. The election of two burgesses only from each borough or settlement was not strictly observed. From 1629 to 1645, some plantations had as many as six representatives, and even after the introduction of the county system in 1634, a county, on one occasion, had as many as eight; but, on the other hand, many districts would send only one burgess.[3] Plantations and boroughs continued to be the basis of representation till 1634, when eight counties were established[4]; but after this, at times, plantations were represented.[5] To break up this irregular system of representation, and to prevent the counties from sending so many burgesses, an act was passed, 1645, providing that no county should have more than four burgesses except James City which should send five burgesses for the county and one for Jamestown.[6]

Very seldom the number of burgesses from a county amounted to four, but in three cases there is an apparent infringement of the law. In 1652, Northampton and Charles City had five each, and, in 1658, Northampton again had five.[7] This increase, however, may have been due to parish representation.

At just what time and by what act parish representation was introduced, is not known; but, in 1656, was passed an act

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[1] Beverly, *Hist. of Va.*, p. 188. [2] *Ibid.*, p. 191.

[3] See *Lists of Burgesses*, Hening, I, pp. 138, 148, 154, 178, 202, 239, 253, 289, 299; and *Va. Hist. Mag.*, vol. II, p. 99.

[4] Hening, I, 224. James City, Henrico, Elizabeth City, Warwick River (Warwick), Warrosquyoake (Isle of Wight), Charles River (York) and Accomac.

[5] Four plantations in 1639, *Va. Hist. Mag.*, II, p. 99.

[6] Hening, I, 300. [7] *Ibid.*, pp. 370, 373, 431.

recognizing parish representation and alluding to a "former act" which gave the privilege to a parish to send one or two burgesses.[1] The list of burgesses for 1632 shows two parishes sending burgesses.[2] Parish representation gave some trouble, as disputes arose whether the county, or the parish, should pay the parochial burgesses. By the act of 1656, every parish had to pay its burgess.[3] Again the parishes had trouble with the sheriffs in regard to the election of their burgesses, and complaints were made that the sheriffs had refused to return the burgesses elected by the parishes; so, in 1660, it was enacted that the sheriffs, at the request of the vestrymen, should hold elections in the parishes and make returns of the same.[4] In 1658, an attempt was made to pay all burgesses by a duty on exported tobacco, and to reduce the number to two from each county to save expense, but this failed to be enacted.[5]

In 1661, the number of burgesses was limited to two from each county and one from Jamestown.[6] Nothing was said of parish representation. This reduction was due to the expense of so many burgesses; and, in 1662, when the same law was reënacted, the heavy expense was attributed to the "great number of burgesses unnecessarily chosen by several parishes."[7]

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[1] *Ibid.*, p. 421.

[2] These were the upper and lower parishes of Elizabeth City (Hening, I, 154). Immediately after the county became the unit of representation parishes still elected burgesses as shown by the list of burgesses for 1639. (*Va. Hist. Mag.* II, p. 99.) The acts of 1643, establishing Lynhaven Parish (Hen. I, 250) and parishes in Upper Norfolk County (Hen. I, 277), granted them the right to choose burgesses.

[3] Hening, I, 421. [4] Hening, I, 545.

[5] Hening, I, p. 493. Burgesses were paid by levies in the counties (Hening, I, 267, 421, 493), and parochial burgesses by levies in the parish (Hening, I, 421). There was no definite pay, but each burgess presented his bill to the County Court, or vestrymen, as the case might be, and an order for a levy would be given. This was used for corruption, as men anxious to be elected would offer to take the "place at low rates;" so by an act, 1661, the pay of each burgess was made "one hundred and fifty pounds of tobacco per day, and charge of going and coming."

[6] Hening, II, 20. [7] *Ibid.*, p. 106.

It was also enacted that every county that would lay out one hundred acres of land, and people it with one hundred tithables, could send one burgess from that place.[1] In 1663, Charles City and Isle of Wight each had three burgesses in spite of the late law, while many counties sent only one.[2]

In 1669, the counties were deprived of the right to choose one, or two burgesses, at discretion, and each county was compelled to send two burgesses, neither more nor less.[3] This established the county system of representation which lasted till 1830. There was no attempt to represent *population*, but simply *districts*, all having equal representation without regard to the number of inhabitants. From time to time, however, the General Assembly created new counties, and each was given two representatives. The College of William and Mary by its charter (1693) was given one burgess.[4]

Town representation necessarily looked somewhat to population, but no definite population was required. Jamestown was first allowed a burgess in 1645, and again by acts of 1661 and 1662.[5] It was the only town represented till 1722, when Williamsburg by its charter was granted representation.[6] Norfolk was given this privilege in 1736.[7]

Thus representation stood in 1776 when a constitution was adopted. This constitution established a General Assembly

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[1] *Ibid.*, pp. 20, 106. This is the first attempt to establish anything like a population basis. Tithables were all white males, negroes and Indian servants, male or female, 16 years old and over. (Hening, II, 84.)

[2] This increase in representation for Charles City and Isle of Wight may be due to the fact that each had laid out 100 acres of land, and peopled it with 100 tithables, but there is no evidence of this. (Hening, II, 187.)

[3] Hening, II, 272.

[4] Charter, art. XVIII; Morrison's *Coll. of William and Mary*, p. 19.

[5] Hening, I, 300; II, 20. [6] Hening, V, 205.

[7] Hening, IV, 542: and Ingle, *Local Institutions in Va.* (J. H. U. Studies, 3 ser.), p. 124. An act of 1705 (Hen. III, 616) for establishing towns throughout the colony provided that, when the population of any town reached 60 families, it might send one burgess to the General Assembly, but this was repealed about 1710 (Ingle, *Loc. Inst. in Va.*, p. 108).

of two houses, both elected by the people.[1] The House of Delegates took the place of the old House of Burgesses, and was to consist of two representatives from each county, and one from Williamsburg and one from Norfolk. The General Assembly was given the right to create new counties and to grant each two delegates, and also to allow representation to towns and cities at its discretion. In case a town, having representation, decreased in population so that for seven successive years its voting population was less than half the number of voters in some one county, it was to be deprived of its delegate.[2] The delegates were to be elected annually.[3]

A Senate of twenty-four members, for the election of whom the State was to be divided into twenty-four districts, was created. Six districts were to elect each year, in order to have a rotating body, each member serving four years. The General Assembly was to meet annually.[4]

We have now seen that representation in Virginia from the first was based on *districts* and not *population;* that by 1669 all traces of plantation and parish representation had disappeared, and that till 1776, excepting the College, only county and borough representation existed. Also it has been seen that the constitution of 1776 adopted the colonial system of county representation as a basis for the House of Delegates, while in the case of towns the whole matter was left in the hands of the Legislature. In regard to the Senate, the constitution

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[1] Hening, I, p. 57, *et seq.*

[2] It is to be noticed that the College of William and Mary, and Jamestown were deprived of their representatives. Since the capital had been moved to Williamsburg, Jamestown had been decreasing in population till in 1776 there were only three or four families on the island.

[3] At this time there were 62 counties and two boroughs, so the House of Delegates was composed of 126 members.

[4] The qualification for a senator or delegate was that he should be an elector and resident of the district or county which he represented. Furthermore, a senator had to be 25 years old. The Senate was not granted the power to initiate legislation, but with the consent of the House of Delegates could amend any bill except a money bill. (Hening, I, 52.)

adopted no basis, but the same convention that drew up the constitution, passed an ordinance apportioning the Senate. This apportionment was purely arbitrary. The greatest defect, however, of the constitution in regard to representation in the Senate was its failure to provide for future apportionment. The constitution also failed to provide means for any future amendments. The result was that its institutions were very firmly fixed, and it was with difficulty that any measure could be carried through for reform.

## CHAPTER III.

### The Struggle for Equalizing Representation.

The defects of representation as apportioned by the Constitution of 1776 were soon observed, and by no one more quickly than by Jefferson.[1] In 1782, in his "Notes on Virginia," he stated his views in regard to representation, and pointed out the great inequality, how the Tidewater section with about two-fifths of the fighting men had one half of the senators and lacked only four of having a majority in the House of Delegates.[2] He desired a constitutional convention to rectify the evils of the constitution, which, he claimed, was not a people's constitution, having been adopted by a legislative body without ratification by the people.[3]

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[1] Jefferson was not a member of the convention which drafted the constitution, but was attending Congress in Philadelphia; but, interested in the affairs of the State, he sent a draft of a constitution to Williamsburg. A plan had already been adopted, but to this his preamble was prefixed. A few years ago this proposed constitution was found and published in P. L. Ford's *Writings of Thomas Jefferson*. See *Jefferson's Works*, vol. 7, pp. 405, 406, and *Va. Convention*, 1829–30, p. 160.

[2] Jefferson said: "A majority of the men in the State who pay and fight for its support are unrepresented in the Legislature. Among those who share the representation, the shares are very unequal. Thus the county of Warwick with 100 fighting men has an equal representation with the county of Loudoun which has 1746." His statistics show that the Tidewater section with 19,012 fighting men had 71 delegates and 12 senators; that Piedmont with 18,828 fighting men had only 46 delegates and 8 senators; that the Valley with 7,673 fighting men had only 16 delegates and 2 senators; and that the Trans-Alleghany district with 4458 fighting men had 16 delegates and 2 senators. (*Jefferson's Works*, vol. 8, p. 360.)

[3] Jefferson objected to the constitution on account of (1) the unequal representation, (2) the restricted suffrage and (3) the great power given to the Legislature (*Works*, vol. 8, pp. 361–372).

A constitutional convention was now discussed in the State, and there was some probability that the Legislature would take steps to call one, so Jefferson drew up a plan for a new constitution. This plan, so far as representation was concerned, favored the qualified voters as a basis of apportionment.[1] Jefferson intended to make a fight for calling a convention, but, being sent to France by Congress, he entrusted the work to Madison. At the May session of the Assembly, 1784, the matter was brought up,[2] and a bill for a constitutional convention was introduced. Madison worked hard for the measure, and delivered a speech in which he emphasized the inequality of representation with no provision for reapportionments,[3] but the bill failed. The members of the Legislature in favor of a convention with unlimited powers were small in number, but "included most of the young men of education and talent." Many were willing to call a convention for specified amendments, but no activity was displayed for this qualified plan.[4] Madison wrote that the public did not seem to be at all aroused by the scheme, and took little interest in it.[5]

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[1] The House of Delegates was to be not more than 300 nor less than 100. The State was to be divided into senatorial districts, and each county should elect four senatorial electors for each delegate that it sent to the Legislature. The senatorial electors in every district should meet and elect one senator for every six delegates to whom the district was entitled. This scheme was too complicated, but the representation in the Senate would have been equal. See *Jefferson's Works*, vol. 8, pp. 441–454.

[2] *Journal of H. of Del.* (1784), pp. 55, 70, 71. Mr. Stuart of Augusta County presented a petition, which, among other things, asked for a constitutional convention. This was referred to the Committee of Propositions and Grievances, which reported favorably. Patrick Henry was a member of the Assembly at the time, and violently opposed the measure, which, after a heated debate of two days, was defeated in the Committee of the Whole. It was asserted the General Assembly had no right to act on the matter at all. See *Madison's Works*, vol. I, pp. 81, 86, 90.

[3] *Madison's Works*, vol. I, p. 82. [4] *Ibid*, vol. I, p. 86.

[5] *Ibid.*, vol. I, p. 90. (Letter to Jefferson.) The following year he wrote that the proposition was gaining ground. (*Madison's Works*, vol. I, p. 154.)

Between 1784 and 1790 little was done for calling a constitutional convention. Petitions were presented to the Legislature nearly every session after 1790, asking that steps be taken to equalize representation, and petitions from Patrick and Henry counties were regularly looked for,[1] but no decided effort was made by the General Assembly till 1806. In this year, Patrick and Henry again presented their petitions for calling a convention.[2] A convention bill was brought in, and very ably advocated, but was defeated by a considerable majority.[3] The matter was undoubtedly considered of great importance. The main object was to equalize representation. The speeches show this. The system of representation was branded as a violation of the principles of republican government in that the minority was really ruling the State. It was a financial burden to the State to have two delegates from each county. In regard to the Senate the apportionment was emphasized as being very unjust.[4] From 1807 to 1815, many efforts were made for a convention to equalize representation and to establish other reforms, but all in vain.[5]

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[1] *Va. Convention* (1829–30), p. 81.

[2] *Enquirer*, January 28, 1806.

[3] *Enquirer*, February 1, 1806.

[4] See speeches in the *Enquirer*, Jan. and Feb., 1806. According to the census of 1800, the district west of the Blue Ridge had a white population of 177,476 and the East, 336,389; yet the West had only four senators, and the East, twenty.

[5] In 1807, Patrick, Henry and Pittsylvania presented petitions to the Legislature. A bill for a convention was introduced and passed the House of Delegates, but was side-tracked in the Senate. (*Jour. of H. of Del.* (1806–7), pp. 67, 68, and *Enquirer*, Jan. 1, 1807.) From 1807 to 1810 many petitions were presented to the Legislature, but no strenuous efforts were made for a convention. At the session of 1810–11, renewed zeal was displayed. A petition from Accomac asked for a readjustment of representation and an extension of suffrage. Again a bill was introduced to submit the question to the people, but was defeated by the close vote of 82 to 79. Of this Assembly, James Monroe was a member. He opposed the bill, stating that he had seen "democracy run wild in France," and that it would never do to make Virginia more democratic. (*Va. Convention.* (1829–30), p. 173, and *Enquirer*, Jan. 31, 1811.) At the following sessions (1811–12, 1812–13, 1813–14, and 1814–15) of the Legislature, petitions were presented for a convention, and bills introduced, but nothing was accomplished. (See *Jour. of H. of Del.* and *Enquirer.*)

At the session of the General Assembly (1815–16) the fight for a convention, due to the inequality of representation, became a prominent one.[1] The advocates of a convention again introduced a bill to take the vote of the people, but the measure was defeated in the House of Delegates by the close vote of 90 to 87.[2]

Frequent petitions for reform, and just as frequent refusals on the part of the General Assembly to take any action in that direction, necessarily called for other expressions on the part of the people. At the April elections (1816) polls were taken in several counties on the subject of a convention.[3] Addresses were circulated in the State, and long discussions appeared in the newspapers on the question of a convention and the representative system. The fight over the convention and representation at this period was becoming a sectional one. That section west of the Blue Ridge Mountains, which hereafter we shall designate simply as the West, was clamoring for a convention to apportion representation on a more equitable basis, in order that it might have its proper representation in the General Assembly, while that section east of the Blue Ridge, usually spoken of simply as the East, was holding back, unwilling to give up any of its power. As yet the inequality of representation in the House of Delegates, though great between counties, was very small with regard to the two great sections of the State. The bone of contention was the Senate. The western people could see no justice in an apportionment which gave their section, with a white population in 1815 of about 233,469, only four senators, while the East, with a white population of about 342,781, had twenty senators; or, in other

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[1] *Jour. of H. of Del.* (1815–16), pp. 33, 37. Petitions from Ohio, Patrick, Rockingham, Brooke, Frederick, Hampshire, Greenbrier and Shenandoah counties.

[2] *Jour. of H. of Del.* (1815–16), pp. 60, 167; and *Enquirer*, Dec., 1815, and Jan. and Feb., 1816.

[3] *Enquirer*, April 13, 1816.

words, that one man in the East should have the same representation in the Senate as three men in the West.[1]

Thus matters stood when, in May, 1816, twenty-two of the most prominent men of western and northern Virginia met at Winchester to consider some plan for calling a constitutional convention. They issued an address asserting that the Legislature in refusing to take the voice of the people on the question of calling a convention to reapportion representation had violated the Virginia Bill of Rights, and that the then existing basis of representation was an "absolute mockery of the principle of free government." The people were urged to put an end to this condition of affairs, and, for this purpose, to meet at their respective court-houses on July 4 following, and to consider the most expedient way for getting a convention. Each county was requested to elect two delegates to meet in convention at Staunton on August 19, to perfect plans of action.[2] Following the publication of this address much discussion ensued on the subject of representation; one side claiming that representation should be based on wealth and slave population as well as white population, while the other stood for white population only as the basis. Many county meetings were held and resolutions passed on the basis question,

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[1] A writer of the time insisted that the West bore ill will towards the East, because the East had too great a representation, and had full control of the State government. He stated that this jealousy and the difference between the interests of the two sections would exist "so long as one part of the State legislates for the other part." (*Enquirer*, June 8, 1816.) Representation was in such a bad state that it even attracted the attention of Matthew Cary, who in the *Olive Branch* (1815) quoted statistics showing that in Warwick the whole population (including negroes) was only one-eleventh that of Frederick or Loudoun. This was considered as iniquitous as the borough system of England (*Olive Branch*, p. 411). Loudoun and Frederick, represented according to white population in the same proportion as Warwick, would have been entitled to 44 delegates each, instead of two. (*Enquirer*, June 12, 1816.)

[2] See Address, *Enquirer*, June 12, 1816. It was signed by 22 persons, representing the counties of Berkeley, Frederick, Harrison, Wood, Monongalia, Fauquier, Loudoun, Fairfax, Hampshire, Jefferson and Brooke.

and delegates elected to the Staunton Convention.[1] This convention met at Staunton, August 19, 1816. Thirty-six counties were represented, and two others elected delegates who were unable to attend. Representation was the chief point of discussion, and a memorial was drawn up, to be presented to the Legislature, asking it to pass a bill submitting to the voters the question whether or not a convention should be called to equalize representation on the *white population* as a *basis*.[2]

This memorial was presented to the Legislature[3] at its next session (1816–17), and referred to a select committee of which Philip Doddridge was chairman. The committee reported a bill in favor of a convention,[4] which with amendments passed the House of Delegates, but was rejected by the Senate.[5]

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[1] See series of articles in *Enquirer*, from June 19 to Sept. 7, 1816; also *Jefferson's Works*, vol. 7, p. 9.

[2] See Proceedings in *Enquirer*, Aug. 28 and 31, 1816. The memorial stated that, in 1802, 1803, 1805, 1806, 1807, 1810, 1811 and 1815, petitions emphasizing the inequality of representation, were presented to the Legislature and rejected, and that an actual vote had been taken on calling a convention in seven counties, and in these a large majority favored a convention. This meeting in Staunton also recommended a form of a memorial for the counties. There was some talk of calling a general convention to draw up a constitution without recourse to the Legislature, but the advocates of this high handed measure were few in number. Of the 36 counties represented at Staunton, 24 were west of the Blue Ridge, and 12, east.

[3] Sixteen petitions from counties were also presented (*Enquirer*, Dec., 1816, and Jan. and Feb., 1817; also *Jour. of H. of Del.* (1816–17), pp. 28, 31, 37, 82).

[4] *Jour. of H. of Del.* (1816–17), pp. 28, 86, 87. The report showed that in House of Delegates of 200 (the number at the time) based on white population of 1810, Tidewater ought to have 46, while it had 64; Piedmont, 76 instead of 70; Valley, 44 instead of 28, and Trans-Alleghany, 34 instead of 38.

[5] *Enquirer*, Feb., 13, 1817; *Jour. of H. of Del.* (1816–17), pp. 184, 203. The idea was a limited convention, (1) to equalize representation, (2) to equalize taxation and (3) to provide means for future amendments to the constitution. This bill was amended in the House to include an extension of suffrage.

The defeat of this measure was a great disappointment to the advocates of reform. The Legislature saw that something had to be done, so brought in a bill to rearrange the senatorial districts,[1] so as to remove the glaring inequality of representation in the Senate. This measure became a law. The result was a reapportionment of the Senate practically based on the white population of 1810. The East received fifteen instead of twenty, while the West got nine instead of four senators.[2] For a time popular clamor was allayed, although the West was not satisfied entirely with the apportionment in the Senate, as its population had increased much since 1810. In 1824 a constitutional convention was again agitated, and polls on the question were taken by twenty-eight counties and the cities of Lynchburg, Richmond and Petersburg, and of these only five gave majorities in opposition to a convention.[3] In 1824 and 1825, much discussion appeared in the newspapers on a convention to equalize representation on the white basis.[4] Jefferson, though in retirement at Monticello, still took an interest

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[1] *Jour. of H. of Del.* (1816–17), pp. 184, 202, 227.

[2] *Acts of Assembly* (1816–17), pp. 7, 8, 9. The House of Delegates could not constitutionally be changed. Previous to 1816, it was thought the Legislature could not reapportion the Senate, but now the constitutional lawyers claimed, since the Constitution of 1776 did not contain the apportionment of the Senate, but simply said that the State was to be divided into 24 senatorial districts, that the Legislature had the power to reapportion the Senate.

[3] *Enquirer*, April and May, 1824. Most of the counties were Eastern ones, and wanted a convention not to change representation, but for other reforms.

[4] *Enquirer*, 1824 and 1825. This paper favored a convention. Writers on one side endeavored to expose the misrule and unfairness of a rule by a minority, while others tried to excite alarm among the people, claiming that the move to equalize representation was only a plan to destroy an equitable government and to overthrow slave property. There was great difference between the two sections on slavery. The West, especially the northwestern section, was settled by many Northerners, and there were few slaves west of the Blue Ridge and scarcely any west of the Alleghany, many of the people being opposed to the institution. This fact came out now. The East feared that with the white basis the government would pass into the hands of the West, and a policy prejudicial to slavery would be pursued.

in the affairs of his State, and he now came out with an open letter in the *Enquirer* advocating reform in representation.[1] To the Legislature (1824–25) petitions for a convention were presented from several counties. A bill to submit the question to the people was prepared, and passed the House of Delegates, but was rejected by the Senate.[2] This aroused the people, and a vigorous exertion was now made for measures of reform.

Loudoun County took the initiative. A vote was taken, and stood three hundred and eighty in favor of a convention and eight in opposition to it. A meeting was then held, resolutions were passed favoring a general convention of all the advocates of reform at Staunton on July 25, 1825, and a corresponding committee of ten was appointed to issue an address to all the counties of the State, calling upon them to exert themselves in favor of this convention.[3]

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[1] *Enquirer*, April 27, 1824. Jefferson said in part: "The basis of our constitution is in opposition to the principle of equal political rights, refusing to all but freeholders any participation in the natural right of self government. The exclusion of a majority of our freemen from the right of representation is merely arbitrary and an assumption of the minority over the majority. . . . In the representative privilege the equality of political rights is entirely prostrated by our constitution. . . . Upon what principle of right or reason can any one justify the giving to every citizen of Warwick as much weight in the government as to 22 equal citizens in Loudoun?"

[2] See *Jour. of H. of Del.* (1824–25), pp. 17, 149 Bill; in Documents attached to *Journal; Enquirer*, Feb. 10, 1825.

[3] *Enquirer*, May 13, 1825. The papers from this date to July 25 are filled with discussion on this proposition. Those advocating a constitutional convention said an alarm must be sounded so loud to the General Assembly as to procure a just respect of their rights. Meetings were held favoring the convention at Staunton, and electing delegates to the same; and editorials in such papers as the *Enquirer*, *Winchester Republican*, *Alexandria Herald*, and *Alexandria Gazette* advocated the movement. A majority of the counties that elected delegates were in the West, yet many in the East favored the meeting at Staunton. Many Eastern counties, however, opposed the meeting as pernicious and dangerous, and claimed that it was bad precedent to have large bodies meeting in the State. Benjamin Watkins Leigh under the nom-de-plume of "Mason of '76" wrote a series of articles in opposition to the meeting at Staunton and a constitutional convention. It is said he asserted that a constitutional convention could not be held

In pursuance of this call, a large number of delegates assembled at Staunton, July 25, 1825. There were one hundred and seven delegates representing thirty-five counties and two cities.[1] Resolutions were adopted in favor (1) of reducing the House of Delegates, (2) of apportioning the members of the General Assembly on the free white population, and (3) of extending the right of suffrage. A form of a memorial, to be signed and presented to the Legislature by the friends of reform, was also adopted.[2] That so many delegates should have appeared from counties hundreds of miles from Staunton, when travel was such a difficult thing, is a strong indication of the feeling of the people, and it is no surprise that following this meeting every effort was put forth by the reformers to influence the coming Legislature in favor of a constitutional convention, or that the conservative element was likewise active. A glance at the newspapers of the period shows how active the people were.[3]

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with safety while Jefferson was alive. Feeling ran high, the East denouncing the West, claiming that the whole move was to oppress slave property. (*Enquirer*, May 13, 20, 31; June 3, 10, 14, 17, 21, 28; July 1, 5, 8, 12, 15, 19, 22, and August 2, 16, 1825.)

[1] Five counties elected delegates who did not attend.

[2] *Journal of Proceedings*, *Enquirer*, August 11, 1825. See also *Enquirer*, July 29, Aug. 2, 5, 9, 1825. This convention was no small thing. It remained in session for one week. The resolutions were unanimously adopted except the clause on the extension of suffrage against which two votes were recorded. We are told that there were more people in Staunton than ever seen there before, that all the houses in the town were filled, and that spectators had come from all parts of the State. The church in which the convention sat, was always crowded.

[3] See *Enquirer*, Aug., Sept., Oct. and Nov., 1825. Resolutions were passed in different counties, some for and some against a convention, and memorials to be presented to the Legislature were circulated. There were two forms of memorials, the one drawn up by the Staunton Convention, and the other by anti-reformers who were opposed to taking the vote of the people on a convention. The latter was circulated in the East and spoke in a very contemptuous way of the reformers. This caused a bitter discussion which showed that the main fight was still over representation. The East was willing for it to stand as it was, while the West wanted a change in the representative basis and white population only as that basis. (*Enquirer*, Aug. 13, 16, 23; Sept. 13, 26; Oct. 4, 7, 11, 21, 1825.)

When the Legislature met in December (1825), some fifty odd petitions praying for a convention, and some thirty odd in opposition, were presented.[1] A special committee was appointed by the House of Delegates to consider these petitions. It reported a bill favoring the call of a convention, but the measure was defeated.[2] A convention to equalize representation continued to be discussed,[3] and at the next session of the Legislature a bill was again reported in favor of submitting the question to the people, and again it was defeated.[4]

This was quite exasperating to the members of the Legislature who wanted a convention it mattered not on what basis. They held a meeting before the Legislature adjourned, and

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[1] A majority of the petitions for a convention were from the West, but many were from the Piedmont, while only one (from Greenbrier) from the West was in opposition. See *Jour. of H. of Del.* (1825–26), pp. 12, 13, 15, 17, 20, 24, 27, 29, 33, 37, 41, 49, 55, 56, 93.

[2] *Jour. of H. of Del.* (1825–26), pp. 15, 17, 103, 104. The committee was composed of 24 members, one from each senatorial district. In reporting it said that 45 counties had presented memorials in favor of a convention, signed by 12,175 persons; and 26 counties, memorials against a convention signed by 4328 persons. Eleven counties, including Richmond City, had presented memorials both *pro* and *con*, those favoring a convention being signed by 2411, and those against, by 2091 persons. This makes a total of 20,905 signatures, and very probably all were male citizens and mostly voters. Now the votes cast on the convention question in 1828 were in all 38,523 (*Governor's Mess., Jour.*, 1828–29, Appendix); so it is probably that about one half of the voters of the State petitioned to the Legislature at this time, which shows what a fight was being waged over the question. The bill which the committee reported, provided for a convention with unlimited powers (Bill, Appendix to Jour., 1825–26), and was defeated by a close vote of 101 to 94.

[3] *Enquirer*, Sept. 1, 1896.

[4] *Enquirer*, Jan. 23, 27, and Feb. 8, 10, 1827. The vote was 107 to 103. The measure would have passed, had not the question of what basis the convention itself should be organized upon, been brought up. The West wanted a bill, providing for a convention based on the white population only, to be submitted to the people. The East was opposed to this, and wanted the *county system*. Some of the strong advocates of a convention voted against the bill to take the sense of the people on the simple question of "Convention" or "No Convention," being unwilling for the people to vote on it, not knowing what basis the convention would be organized upon.

asserted that the members from the larger counties favored a convention, and that a majority of the people were anxious for one; so they recommended to the voters of every county to instruct their delegates how to vote in the next Legislature on this question.[1] At the April elections (1827) some of the counties took a vote on a convention, and, this being the issue, most of the candidates were probably required by their constituents to pledge themselves either for or against a convention.[2]

When the Legislature met in December (1827) a bill was introduced to submit to the vote of the freeholders the question of a "Convention" or "No Convention," and it passed the House of Delegates by a vote of 114 to 86, and the Senate by a vote of 14 to 10.[3] Thus after a fight which had been waged with more or less vigor for fifty years, the Legislature at last submitted the question to the qualified voters. Polls were opened in all the counties on their respective court-days in April, May and June, and the returns show that 21,896 votes were cast for, and 16,637 against a convention.[4]

It now became necessary for the Legislature (1828–29) to settle upon some plan of organization for the convention. The Legislature was divided into two parties, each wanting to control the convention. The reformers were for the white population as the basis of organization, while the conservative party wanted white population and taxation combined, or Federal Numbers, or the then existing county system. The reformers were mostly from the West, with the exception of delegates from a few large counties of the Piedmont section, while the other party was entirely from the East. The white basis men were very active, and held several caucuses, with

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[1] *Enquirer*, March 8, 1827. [2] *Enquirer*, April, 1827. Election Returns.

[3] *Jour. of H. of Del.* (1827–28), pp. 16, 23, 33, 131; *Enquirer*, Dec. 15, 1827, and Feb. 2, 1828; *Acts of Assembly* (1827–28), p. 18. The reformers attempted to have the question submitted to all white male citizens over 21 years of age, but this was defeated by a vote of 108 to 91.

[4] See Documents with Governor's Mess., Appendix to *Jour. of H. of Del.* (1828–29), p. 50.

Philip Doddridge as their leader, declaring that they would accept no basis of organization except the white basis. Long speeches were made in the Legislature, and articles appeared in the papers as to the proper basis for the convention.[1] A bill was reported favoring Federal Numbers as the basis of organization; four delegates from each of the twenty-two congressional districts.[2] After many amendments had been offered and rejected,[3] a bill, making the basis of organization the county system with slight modifications, passed the House of Delegates.[4] The Senate rejected this, and offered a substitute, making the senatorial districts the basis, each district to elect four delegates. The House of Delegates accepted this.[5] Thus the law[6] for the organization of the convention took the senatorial districts as a basis,[7] and provided for an election of delegates at the May terms of the county courts. The delegates were to assemble in Richmond on the first Monday in October, 1829. These were the final arrangements for the constitutional convention for which the reform party, with Jefferson as its founder, had fought so long and faithfully.

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[1] *Enquirer*, Dec. 4, 16, 23, 27, 1828; Jan. 8, 13, 15, 22, and Feb. 10, 12, 1829. The editor of the *Enquirer* first advocated the senatorial districts, then the submitting of the question of organization to the voters, and finally the white basis.

[2] *Jour. of H. of Del.* (1828–29), p. 70; also Bill in Appendix.

[3] The amendments in the Appendix show that no less than 12 plans were offered. The most important were (1) Federal Numbers, (2) white basis, (3) senatorial districts, and (4) county system.

[4] The measure as it passed the House of Delegates was one member from each county under 8,000 inhabitants; those with 8,000 or nearly to have two, and for every 4,000 over 8,000, one additional delegate. *Jour. of H. of Del.* (1828–29), p. 143.

[5] *Enquirer*, Feb. 10, 12, 1829. [6] *Acts of Assembly* (1828–29), pp. 17–22.

[7] The opposition of the West to this basis was very strong. Its members with a few exceptions voted against this plan. They argued that in amending the fundamental constitution of the State, all citizens should be equally represented. The plan adopted, however, giving 36 delegates to the West, and 60 to the East, based on the white population of 1810 (for this is what the senatorial districts as a basis meant), made each Western delegate represent 8,845 white persons, while each Eastern delegate represented only 6,261 whites.

## CHAPTER IV.

### The Fight over Representation in the Convention of 1829–30.

The Convention assembled in the Capitol at Richmond, October 5, 1829. Its ninety-six members were among the most prominent men of the State, and many of them had a national reputation. It is probable that there has never been in the United States a state constitutional convention in which there was so much talent. There were two Ex-Presidents, Madison and Monroe; the Chief Justice of the United States, Marshall; several who were or had been United States Senators, and many who during their lives were members of Congress, or held other posts of honor.[1] This Convention has always been regarded as one of the greatest assemblies of intellect ever held on Virginia soil.[2]

The Convention began its work by selecting James Monroe as President,[3] and by appointing four committees, one of which was on the Legislative Department. Of this Madison was Chairman.[4] This Committee reported October 24, and so far as representation was concerned it favored the *white*

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[1] See *Proceedings and Debates of Va. Convention*, 1829–30, pp. 3–4. Lists of Members.

[2] There are two sketches of this Convention: one, a speech by Hugh Blair Grigsby, delivered before the Virginia Historical Society, Dec. 15, 1852, published in *Va. Hist. Reporter*, vol. I, Richmond, 1854: the other, by Hugh R. Pleasants in *Southern Literary Messenger*, vol. 7 (1851), pp. 147 *et seq.*, and pp. 297 *et seq.* There is a painting of this Convention in the Portrait Gallery of the Va. State Library.

[3] *Debates of Convention*, p. 1. [4] *Ibid.*, p. 23.

*population* as the *basis* for the House of Delegates, and a reduction of its number to not less than one hundred and twenty, but not more than one hundred and fifty. In regard to the Senate, the report favored no change at all.[1]

This report was taken up in the Committee of the Whole, and then was waged a fierce battle in which some of the keenest intellectual swords were exercised. The reformers stood for the white population as the basis of representation for both houses, and tried to amend the report to that effect, while the conservatives thought that the true basis for both houses was white population and taxation combined. The latter was called the *mixed basis*, while the former was spoken of as the *white basis*.

The mixed basis was the Eastern plan, and was supported entirely by members from the East.[2] They contended that this basis was the only means of giving justice and protection to property, especially slave property. The white basis would put the government in the hands of non-property holders to a great extent, and property might be oppressed with heavy taxation.[3] The white basis would give representation to the labor of the West without taxation, while the labor of the East would be unrepresented, yet taxed; however, in the political economy of the country, the Western laborer would fill the same place as the slave.[4] The East, furthermore, feared that the *internal improvement* element in the State would gain too much power by an apportionment on the white basis.[5]

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[1] *Ibid.*, p. 39.

[2] The two parties in the Convention were about equally divided. The white-basis men were the 36 delegates from the West, and 12 from the larger counties of the Piedmont section. The mixed-basis party were the remaining Eastern members. See *Debates of Convention*, p. 690.

[3] Benj. W. Leigh's Speech, *Debates of Convention*, p. 153. The best speeches for the mixed basis were by Leigh, Abel P. Upshur, Robert Stanard, Thomas R. Joynes and Governor Giles. Leigh was the leader of the Eastern party.

[4] *Debates of Convention*, p. 153.

[5] *Ibid.*, pp. 127, 155.

It was further argued that the true principle of government was not simply a rule of a majority of members, but of a majority of interests, and that the mixed basis was a happy combination of both principles.[1] The whole matter comes to this: The mixed basis was to the interest of the East, which, holding a very large slave population and paying a large per cent. of the taxes, was unwilling to entrust the government to the West, where the people were essentially a non-slaveholding population, and many of anti-slavery sentiment.[2]

The advocates of the white basis argued from the Bill of Rights that "all power is vested in and consequently derived from the people," which would be true in regard to the white basis only, as the *mixed basis* would recognize wealth as an element in granting power.[3] The white basis conformed to the principle that a majority of the people should rule, while the mixed basis would put the entire control of the government in the hands of the minority, and that a minority of plutocrats.[4] A millionaire would have, under the *white basis*, representation no greater than any other white man, but by the *mixed basis* he would be granted representation equal to that of many hundreds of honest citizens.[5] In short, the West took this view of the matter, that one white man was equal to any other in a political sense, whether he owned property or not, and thought the East would have viewed it

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[1] *Debates of Convention*, p. 66.

[2] The East at this time had about 390,000 slaves, while the West had only about 50,000. (*Debates*, p. 112.) The East in 1828 paid $321,926 taxes, and the West $104,636. For full statistics see Auditor's Report in Documents appended to the *Journal of the Convention*.

[3] *Debates of Convention*, pp. 54, 55.

[4] *Ibid.*, pp. 58, 106.

[5] *Ibid.*, p. 58. Mr. John R. Cooke's speech. Good from the standpoint of the natural rights of man. Principal speeches for *white basis* were by Philip Doddridge, Chapman Johnson, Alfred H. Powell and W. F. Gordon. Doddridge was the leader of this party.

in the same way but for its interest in slave property.[1] Furthermore, the West wanted more power in the government, so that it might foster its internal improvement schemes.

At an early stage of the debate[2] it became plain that the State was divided into two sections with widely conflicting interests, and that each was jealous of the other. The only way by which the wound could have been healed would have been the adoption of the white basis with a spirit of trustfulness in the West, or a plan providing for the adoption of the white basis at some future time. But the East was not willing to sacrifice its principle of representation, so the only way left was to try to adopt some compromise basis. As stated, the Legislative Committee reported in favor of the white basis for the House of Delegates, and a permanent Senate as it then stood. To this an amendment was offered to substitute the mixed basis for the House.[3] To this amendment an amendment was offered to apportion the House of Delegates on the mixed basis and the Senate on the white basis, but it was defeated.[4]

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[1] *Debates of Convention*, p. 149. A careful reading of the *Debates* shows that the inequality of the distribution of slavery and taxation in the two sections produced the difference, and gave rise to the two schemes for representation. The conditions of the State were peculiar, something like 80 per cent. of the slaves being in the East, and about 75 per cent. of the taxes being paid by that section, so it was but natural that the East should be reluctant to adopt a basis of representation which might take the government from it, and give the control to a section with conflicting interests. Hence the East advocated the mixed basis.

[2] The debate was throughout lively and animated, and at least two-thirds of the time that the Convention was in session the subject of representation occupied the attention of the members.

[3] *Debates of Convention*, p. 53. Judge Green's amendment.

[4] This amendment was proposed by Mr. Scott, of Fauquier. *Debates of Convention*, p. 148. Monroe now saw the condition of affairs, the growing conflict between the sections, and, though infirm in health, addressed the Committee of the Whole. He said, in part: "If we go home without having agreed upon a constitution, or if we shall agree upon one, and shall pass it by a small majority, what will be the effect? An appeal will immediately be made to the whole community, which will excite repellant feel-

Finally, after a debate of twenty-two days, the first amendment was lost by the vote of 49 to 47.[1] Many plans were now proposed in regard to both the House of Delegates and the Senate, but there seemed to be no possible way of bringing about an agreement for a constitutional basis.[2] After two

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ings in one section against the other, which will endanger the dismemberment of the State. . . . . Sectional feelings already existing will be nursed and cherished, they will increase and spread till at length one part of the community will be pitted against the other, and a deep and malignant acrimony will ensue, and where will it end? In an actual dismemberment of the Commonwealth, which would be the worst evil that can befall us, a result that will be equally calamitous to all. . . . . It is contended by those who reside in the western part of the State that representation in the Legislature should be based on white population alone; it is contended, on the other hand, by those who live in the East, that it should be based on the principle of population and taxation combined. These are the two grounds of difference. I am satisfied that the claim of those in the West is rational under particular circumstances. It has often been suggested here, and I accord with that view, that, putting the citizens in an equal condition, the basis which they claim is just. It is founded on the natural rights of man, and in policy, also, under certain circumstances. But look at the Atlantic country and what is their claim? They are the oldest portion of the State, they have a species of property in a much greater amount than the people of the West, and this they wish to protect. It consists of slaves. I am satisfied if no such thing as slavery existed that the people of the Atlantic border would meet their brethren of the West upon the basis of a majority of the free white population." Monroe then advised both sides to yield some, and declared in favor of some measure by which "representation should be based on the white population with some reasonable protection for property." He thought the best plan would be to apportion the House of Delegates on the white basis and the Senate on the mixed basis. These, at some length, are the views of Monroe, but they are very interesting as showing the light in which a fair-minded observer viewed the situation. *Debates of Convention*, pp. 148–151.

[1] *Debates of Convention*, p. 321.

[2] One plan was white basis for House of Delegates and taxation exclusively for Senate; another (Leigh's), Federal Numbers for the House of Delegates. Madison and Marshall favored the last, but Monroe spoke in opposition to it. An attempt was made to settle the Senate first, and several propositions, one for Federal Numbers, another for mixed basis, and a third for taxation exclusively, were offered and rejected. *Debates of Convention*, pp. 321, 322, 361, 446, 447, 449.

months of fruitless debate and nothing at all adopted in regard to representation, many different compromises were proposed. One plan was to drop the basis question entirely, and simply to make an apportionment in both branches of the Legislature to remove the glaring inequalities of representation;[1] another plan was for an average of the three bases (white basis, Federal Numbers and mixed basis), as a constitutional basis.[2] The Western members held repeated conferences to provide some plan of compromise, and after careful consideration they presented as their best proposition white basis for the House of Delegates and Federal Numbers for the Senate; a reapportionment to be made every ten years according to this principle.[3] Chief Justice Marshall now declared

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[1] *Debates of Convention*, p. 455. The plan of William F. Gordon, of Albemarle, a white-basis man: He proposed a Senate of 24, 10 from the West and 14 from the East; and a House of Delegates of 120: 26 from the Trans-Alleghany district, 24 from the Valley, that is, 50 from the West; and 37 from the Piedmont, 33 from Tidewater, making 70 for the East.

[2] *Debates of Convention*, p. 494. The plan of Abel B. Upshur: Senate of 30; West, 13, and East, 17. House of Delegates, 120; West, 48, and East, 72. B. W. Leigh offered a plan for a House of Delegates of 126; East, 77, and West, 49. It provided that the number of counties in the West could be increased and given delegates by the General Assembly, provided the House never exceeded 130. By this the East would have always retained the majority. There was to be no constitutional basis, but the apportionment proposed was on an average between the white and mixed basis. (*Debates of Convention*, p. 547.)

[3] It was emphasized that, unless this plan was adopted, the West would not be satisfied, and that there would still be trouble in regard to the basis question. (*Debates of Convention*, pp. 495–496.) There was an element from the West that thought the white basis should be the only principle for both Houses, but was willing to limit the powers of the Legislature in such a way that one section could not overburden another by high taxes and large appropriations. A plan to this effect was submitted by Alexander Campbell. All taxes were to be *ad valorem* and on a fixed ratio between personal and real property, and appropriations for internal improvements in either the East or West to be in "proportion to the amount of taxes paid by the citizens" in those sections. The East viewed such limitations as mere "paper guarantees," claiming that, if the West once controlled the State government, it would be an easy thing to call another constitutional convention and to remove all restrictions. (*Debates*, p. 497.)

his views on the basis question. Individually he favored Federal Numbers, but was willing to compromise on an average between the white basis and Federal Numbers.[1] Every effort was made for reconciliation and for removing the jealousy existing between the sections of the State. Madison, who fifty-three years before had been a member of Virginia's first constitutional convention, though feeble, pleaded for agreement, and advocated Federal Numbers.[2]

There were five compromise plans before the Convention: two for simple apportionment without adopting a constitutional basis; one for an average of the white basis, mixed basis and Federal Numbers as a constitutional basis; another for white basis in the House of Delegates and Federal Numbers in the Senate; and another for an average between the white basis

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[1] *Debates of Convention*, p. 498. The different plans for a basis of representation during the Convention were, (1) white population alone (*i. e.*, the white basis), (2) mixed basis, (3) Federal Numbers, (4) total population, and (5) taxation exclusively. To show the difference, I have prepared the following:

| | House of Delegates of 120. | | Senate of 30. | |
|---|---|---|---|---|
| *White Basis.* | *East.* | *West.* | *East.* | *West.* |
| (Census, 1830) | 64 | 56 | 16 | 14 |
| *Mixed Basis.* | | | | |
| (Taxes, 1828) / (Census, 1830) | 77 | 43 | 19 | 11 |
| *Federal Numbers.* | | | | |
| (1820) | 81 | 39 | 20 | 10 |
| *Total Population.* | | | | |
| (1820) | 86 | 34 | 21 | 9 |
| *Taxation only* | 91 | 29 | 22 | 8 |

Cf. census of 1820, 1830; *Documents of Convention*, 1850–51; *Documents of Convention* of 1829–30 (Appendix to *Journal*), and *Debates* (1829–30), pp. 140, 270, 499.

[2] *Debates of Convention*, pp. 537–538 and 573–574. When he rose to speak, his voice was so weak that he could scarcely be heard, and the members from all parts of the hall crowded around him, wishing to hear every word that fell from his lips.

and Federal Numbers for both houses.[1] Once more a lively debate ensued, and it became evident that no compromise basis would be adopted; so the only thing was to make a more equitable apportionment, and to reduce the House of Delegates. The reformers opposed every basis that did not embody the *white basis* for the House of Delegates, and the conservatives were unwilling to yield this. John Randolph had already suggested an adjournment *sine die*;[2] and there was talk of the West seceding from the Convention in a body,[3] so great was the animosity between the two sections over this basis question. The plans were now narrowed down to two, Gordon's and Upshur's. These had been so modified as to give by the former a majority of twenty-six to the East on joint ballot of

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[1] *Debates of Convention*, p. 547. To give some idea of these plans I add the following table:

| | | House of Delegates. | | |
|---|---|---|---|---|
| | | *West.* | *East.* | *Total.* |
| Mr. Gordon's plan... | Apportionment without adopting any basis. Calculations on white population, 1820. | 50 | 70 | 120 |
| Mr. Leigh's plan..... | Apportionment without adopting any constitutional basis. Calculations on an average between mixed basis and white population, 1829. | 49 | 77 | 126 |
| Mr. Cooke's plan..... | White population as constitutional basis. Western plan. Census according to Auditor's statement, 1829. | 56 | 64 | 120 |
| Mr. Upshur's plan... | Average of white basis, mixed basis and Federal Numbers as a constitutional basis. Apportionment according to estimate of 1829. | 48 | 72 | 120 |
| Mr. Marshall's plan. | An average of white basis and Federal Numbers as a constitutional basis. Census of 1820. | 47 | 79 | 126 |

[2] *Debates of Convention*, pp. 492 and 572.

[3] *Debates of Convention*, p. 571. Leigh said that it was talked of outside the Convention, and Doddridge announced that he individually was thinking of leaving the Convention, since the Eastern members had announced as their ultimatum that they would not apportion the House of Delegates on the white basis, or vote for any measure which would provide for the adoption of that basis at some future time.

the two houses, and by the latter a majority of twenty-eight.[1] Of the two the West preferred Gordon's plan, which, further modified so as to give the East on joint ballot a majority of twenty-seven, was finally adopted in the Committee of the Whole by a vote of 49 to 43.[2] This plan was not satisfactory to the Western members, as it provided no basis for future apportionments. They denounced it as a "mere shift and temporary expedient," declaring that the adoption of no constitutional basis would mean another convention in the near future, and a continuation of the strife between the two sections.[3] Attempts were then made to adopt a basis for future apportionments. Many plans were offered,[4] and the Committee of the Whole finally declared for an average of the white basis and Federal Numbers.[5]

On the 18th of December, the Committee of the Whole reported Mr. Gordon's plan to the Convention, and it was passed by a vote of 50 to 46.[6] The measure which the Com-

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[1] Gordon's original plan was a House of Delegates of 120, 50 from the West and 70 from the East; and a Senate of 24, 10 from the West and 14 from the East: the Senate was afterwards changed to 32; 13, West, and 19, East. Upshur's original plan was a House of Delegates of 120; 48, West, and 72, East: a Senate of 30; 13, West, and 17, East. He afterwards changed the Senate to 32; 14, West, and 18, East. *Debates of Convention*, pp. 455, 494, 559, 567, 570.

[2] *Debates of Convention*, p. 574. As adopted by the Committee of the Whole, the House of Delegates was to be 127: 29 from the Trans-Alleghany district, 24 from the Valley, making for the West 53; 40 from the Piedmont and 34 from Tidewater, making 74 for East. The Senate was to be 32; 13, West, 19, East.

[3] *Debates of Convention*, pp. 570, 571.

[4] Doddridge proposed after every census to reapportion the House of Delegates on white basis, and the Senate on Federal Numbers. Another plan was to submit to the people after the next census the question which basis was to be used; another to take the vote of the people on the *white basis*, when the new constitution would be submitted, and still another was to adopt the *white basis* for the House of Delegates and to leave the Senate unchanged. *Debates of Convention*, pp. 570, 574, 575.

[5] *Debates of Convention*, pp. 574, 575. Mr. Upshur's proposal; but originally suggested by Marshall.

[6] *Debates of Convention*, p. 668.

mittee of the Whole reported, making the basis for future apportionments an average between the white basis and Federal Numbers, was so thoroughly distasteful to the Western members, and they asserted with so much vehemence that they would not submit to it, that the members from the East were afraid to push it, and it was defeated.[1] Repeated attempts were still made to adopt some basis. All argued that the matter must be settled for good and all, and forever sunk, or else a division of the State would follow; yet they would not agree.[2]

A select committee was appointed to draft a constitution from the resolutions that had been passed.[3] In regard to representation they reported that it was difficult to make the apportionment of delegates to the different counties, and there was complaint of injustice done to some counties.[4] No great difficulty was experienced in regard to the Senate. The Convention struck out one hundred and twenty-seven as the number for the House of Delegates,[5] and gave the power to the select committee to apportion representation, provided it

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[1] *Ibid.*, p. 671.

[2] B. W. Leigh presented a plan for a House of Delegates of 139, 56 from the West and 83 from the East. The East was to have no more new counties, but ten could be formed by the Legislature in the West. As population increased, representation could be increased provided the House never exceeded 160. This meant that 21 more members could be added to the House of Delegates. Should the West get all, the East would still have a majority of 6, consequently this plan was not satisfactory to the West. Doddridge offered white basis for the House of Delegates and Federal Numbers for the Senate, to take effect after 1840; another proposal was Federal Numbers for the House and white basis for the Senate; another that in 1840 and every ten years after, a census of the qualified voters be taken and the Legislature make an apportionment in both houses on this basis; and still another, that the Senate be a fixed body, and the House be based on the qualified voters. (*Debates of Convention*, pp. 675, 676, 680, 681, 689, 690, 705, 749, 751, 765.)

[3] *Debates of Convention*, p. 777. The committee was Madison, Marshall, Doddridge, Chapman Johnson, B. W. Leigh, Tazewell and Cooke.

[4] *Debates of Convention*, p. 798.

[5] *Debates of Convention*, p. 799.

was done so as to retain the relative proportion for the four districts of the State. The House of Delegates, however, was not to exceed one hundred and fifty.[1] The committee made the House of Delegates one hundred and thirty-two: thirty from the Trans-Alleghany district, twenty-five from the Valley; forty-one from the Piedmont, and thirty-six from the Tidewater section.[2] The Convention changed this by adding one to the Trans-Alleghany district, and one to the Piedmont.[3] It was also agreed that, in 1841 and every ten years after, the Legislature should have the power to reapportion representation, provided no change was made in the number from any district.[4] There was a strong desire to adopt some plan for a reapportionment of the whole State without reference to the districts; so finally a resolution, proposed by Mr. Madison, was carried and introduced into the constitution, that the "General Assembly after the year 1841 and at intervals thereafter of not less than ten years, shall have authority, two-thirds of each house concurring, to make reapportionments of delegates and senators throughout the commonwealth so that the number of delegates shall not at any time exceed one

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[1] *Ibid.*, p. 808.

[2] *Ibid.*, p. 820.

[3] *Ibid.*, pp. 847, 848, 898. The clause on representation in the constitution thus made the House of Delegates 134, apportioned as follows:

| | | |
|---|---|---|
| The district west of Alleghany (Trans-Alleghany) | 26 counties, 31 delegates | West, 56. |
| The district between Alleghany and Blue Ridge (Valley) | 14 " 25 " | |
| The district between Blue Ridge and Tidewater (Piedmont) | 29 " 42 " | East, 78. |
| The Tidewater section | 36 counties and three cities, 36 delegates | |

The Senate of 30: West, 13; East, 19. This gave the East a majority of 28 in the Legislature. The apportionment was on the census of 1820, according to which the population (white) of the East was 349,073, and of the West 254,208. An apportionment on the white population as it then stood (1830) would have given the West 62 and the East 72 in the House, and in the Senate, the West 15 and the East 17; an Eastern majority of only 12.

[4] *Debates of Convention*, pp. 828, 836.

hundred and fifty, nor of senators, thirty-six."[1] These amendments were not satisfactory to the Western members who claimed that it would be impossible ever to get the Legislature to agree, or to get a two-thirds majority.[2] When the final vote was taken in the Convention on the constitution the Western men voted against it because of the failure to settle the basis question.[3]

January 15, 1830, the Convention adjourned *sine die*, and at the April elections (1830) the new constitution was submitted to the people and ratified by a vote of 26,055 to 15,563.[4] Of the forty Western counties, only eleven gave majorities for the constitution, and in these the vote was close,[5] while all the Eastern counties gave majorities for the constitution, most of them very large majorities, except Warwick and Lancaster which voted for rejection.

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[1] *Debates of Convention*, pp. 849, 854. [2] *Ibid.*, p. 850.

[3] The constitution passed the Convention by the vote of 55 to 40. Cooke was the only Western man who voted for it. Doddridge was sick, but would have voted "no." Thirty-four Western men voted against it, one Tidewater man, Stanard, and five from the Piedmont. (*Debates*, p. 882). The white-basis men claimed 49 members of this convention, but a few were unwilling to pass their basis without a decided majority, hence the *white basis* was not adopted. (*Debates*, p. 694). The West had only 36; the others were from the Piedmont. At one time there was a white-basis man from Tidewater, Robert B. Taylor of Norfolk, but his constituents forced him to resign. (*Debates*, pp. 234, 235). The West remembered his stand, and in the next Legislature with some Eastern members elected him a circuit judge for the Norfolk district in spite of opposition to him from that circuit.

[4] *Debates of Convention*, p. 903. (Official poll of each county.) The vote of the West was 13,282 for rejecting and 5,985 for ratification; of the East, 2,281 for rejecting and 20,070 for ratifying. The vote for ratification in the West would not have been so large but for the clause extending suffrage. The vote shows the difference in the sentiment of the two sections.

[5] These eleven counties were Alleghany, Augusta, Botetourt, Frederick, Hampshire, Jefferson, Lee, Rockbridge, Rockingham, Shenandoah and Washington; all Valley counties except Lee and Washington. These counties were all large and would gain by the new system of representation.

The new constitution, though in many respects a failure, made improvements in representation. It reduced the House of Delegates from 214 to 134, and thus cut down the expenses of the government. Glaring inequalities of representation were removed, such, for instance, as two delegates from Warwick, while Loudoun, with twenty-two times as large a white population, had only two delegates. In fact, throughout the State the counties had representation apportioned more nearly in accord with their respective populations. With reference to the two great divisions of the State, the apportionment was better. The West, under the old constitution, had about 33 per cent. of the members of the Legislature. It was now given 41 per cent. Had the apportionment been made on the white population as it then stood, the West would have received about 46 per cent., hence that section never became reconciled to the new constitution. No reapportionment could be made before 1841, and not even then could the numbers from the different sections be disturbed, unless two-thirds of the General Assembly concurred; and, since a large majority of the Legislature were Eastern members, the chances of are apportionment were meagre. The great misfortune was that the Convention could not agree upon some constitutional basis, and it is a noteworthy fact that but for slave property a basis of representation would probably have been embodied in the constitution.

## CHAPTER V.

### The Steps to the Convention of 1850–51.

The adoption of the new constitution by no means settled the basis question. The reapportionment was far more equitable than the previous county system, and for that reason the West was quieted for a while. The accusation was still brought, however, that the power was too thoroughly centered in the wealthy classes of the East, and the advocates of internal improvements saw that no great scheme could be carried through, while much money would be wasted by the iniquitous "log-rolling" system. Internal improvements became the principle of division between the sections. Western Virginia was undeveloped, and the wealth of that section was too small for extensive works to be executed by private enterprise, so the fight in the Legislature was for State appropriations to assist in the work.[1] All the power being in the hands of the East, these appropriations were hard to get, hence the West felt bitterly the apportionment of representation. Eastern Virginia was in a state of premature decay, and the West claimed that this condition was due to the commercial non-intercourse of the two sections.[2] An effort was made to

[1] *Enquirer*, Jan. 27, 1831.

[2] *Enquirer*, Feb. 8, 12, March 15, Dec. 28, 1831; Jan. 5, 7, 10, 31, Feb. 4, 1832. The intercourse was so poor that in going from the eastern to the western portion of the State one was often compelled to go through Maryland and Pennsylvania. Western Virginia trade went to Baltimore. In 1831 an internal improvement convention was held at Lewisburg, which emphasized the decline of Eastern Virginia and the necessity for closer connection between the sections. A scheme was proposed to have a canal

establish a commercial route between the sections, but the Eastern majority in the Legislature strenuously opposed large appropriations; so the scheme finally came to naught.[1] The question was one of great importance, and *The Enquirer*, the leading paper of the State, declared in favor of giving the West an Eastern market, instead of letting the trade go to Baltimore.[2] The situation was grasped by some Eastern Virginians, who saw that either Norfolk or Baltimore had to be the emporium for Western trade, and that without a liberal policy on the part of the General Assembly it was sure to be Baltimore.[3] The politicians of Eastern Virginia, however, took too much of a local view of the matter, so that great schemes of internal improvements were appealed for in vain. Every section was for itself, and the interest of the State, as a whole, was overlooked. In vain did the people of the West try to

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from Richmond to Lynchburg, and a railroad from there to the Ohio River. (See memorial in *Jour. H. of Del.*, 1831–32, Doc. No. 8.) The Western people persisted in efforts for these improvements, and said that the "mongrel principle" of representation prevented them from accomplishing their purposes, and that they hoped the East would show a spirit of liberality. (*Enquirer*, Jan. 31, 1832.)

[1] *Jour. of H. of Del.* (1831–32), p. 131. The matter was before the Assembly frequently, and they acted favorably on it, but never pushed it with energy.

[2] Editorial in *Enquirer*, June 1, 1832.

[3] *Enquirer*, June 8, 1832. It seems plain to us that an effective commercial route connecting the East and West would have been the making of Norfolk and Richmond, but sixty years ago Eastern Virginians failed to see it. On the other hand, they argued that it would be to their interest to keep out Western products, as the prices of their products would be reduced. (*Enquirer*, May 17, 1833.) The truth is: Eastern Virginia was, at the time, essentially an agricultural section, and a man's highest ambition was to be a large slave-holding planter. The profits to the State, as a whole, to be gained by making the towns centres of trade and industries, were seen by few in the East, and the result was that few efforts were made to advance the interests of the cities. In 1833 a traveller in the Valley might see long trains of wagons winding their way to Baltimore instead of to Richmond. (*Enquirer*, May 17, 1833.)

enlist the East in their schemes of improvements,[1] but they could succeed in getting only small appropriations by means of the so-called "log-rolling."[2] The importance of the subject of internal improvements[3] in connection with representation is this: The Western people finding that their desires for internal improvements were not going to be granted, began within ten years after the adoption of the new constitution to agitate the basis question once more. They wished to have representation based on white population so that they might have the power to execute their own measures in spite of the opposition of the East.

During the period from 1830 to 1850, there was strong feeling of jealousy between the sections of the State, and much talk of separation on the part of the West.[4] Yet there is no

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[1] The papers of the West, *The Kanawha Banner* and *The Wellsburg Republican*, entreated, even demanded, a liberal and enlarged system of internal improvements. Meetings were held in many places to arouse interest in the proposed commercial route. (*Enquirer*, Sept. 13, Oct. 18, 25, 1833, and Sept. 9, 1834.)

[2] The principle of "log-rolling" was that sections having pet schemes would unite and pledge themselves to vote for each other's schemes, and thus get a majority. Piedmont was very anxious for internal improvements, and would often combine with the West, promising some petty appropriations for its support. Tidewater always resisted these measures.

[3] The question of internal improvements was one of some importance several years before the Convention of 1829–30, but it was not till 1831 that the matter began to attract so much attention, which it continued to do for a quarter of a century. Conventions after conventions were held on the subject. An examination of *Enquirer* from 1830 to 1850, the *Reports of the Board of Public Works*, the *Journals and Documents of the House of Delegates* and the *Governors' Messages*, shows how much the matter was agitated in Virginia.

[4] Lewis: *Hist. of West Virginia*, pp. 323–325. He tells us that separation was agitated principally by the politicians west of the Alleghany; (1) because so much money was appropriated for internal improvements in the East, while a Western delegate had to be satisfied with a few hundred dollars for a mud turnpike; (2) because all the public buildings were in the East except the Insane Asylum at Staunton; (3) because from 1776 to 1850 the West had been politically ostracized. The West had in this period only two United States Senators, Moore and Pennybacker (Lewis says one,

doubt that a majority of the Western people remained firm in their allegiance to their mother State. They turned their eyes, however, to another constitutional convention to redress their grievances. Equal political rights, equal representation on the white basis, became their cry.

The Legislature of 1839–40 had the subject of representation brought before it. Two fruitless attempts were made to take some action on the matter; one for a constitutional convention,[1] the other for reapportionment of representation by the Legislature.[2] The session of 1841–42 was also petitioned by many counties to reapportion representation throughout the State,[3] and a special committee was appointed to consider the matter.[4] It reported for a reapportionment on the suffrage basis (*i. e.*, on the qualified voters of the State).[5] A minority report made

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Moore; for election of Pennybacker, see *Jour. H. of Del.*, 1845–46, p. 20), and both from the Valley. Only one man was governor from the section west of the Alleghany. This was Joseph Johnson who was not governor till 1850. The *Enquirer* in 1845 had begged the Legislature to recognize the West, and elect a governor from that section. (*Enquirer*, Nov. 2, 1845.)

[1] *Enquirer*, Feb. 23, 1841.

[2] *Enquirer*, Feb. 26, 1841. The West, according to the census of 1840, had a white population of 371,570, and the East, 369,398; so that in a House of Delegates of 134, the West on this basis would have been entitled to 67 instead of 56, and in the Senate of 32 to 16 instead of 13.

[3] *Enquirer*, Jan. 6, 18, 22, March 1, 1842. Sixteen petitions. Some were bitter, declaring that, as representation stood, the Western people were but slaves of the East. (See Lewis County Resolutions: *Enquirer*, March 1, 1842.)

[4] *Enquirer*, Jan. 6, 1842.

[5] The tenor of the report was that the West in 1840 had a small majority of the white population; that, since every voter had the same right at the polls, every voter should be equally represented. Representation as it then stood, gave the East (with a voting population of about 44,032) 78 delegates, and the West (with a voting population of 42,016) only 56 delegates. Each Eastern delegate represented 564 voters, at which ratio the West should have had 74 instead of 56 delegates; or, in other words, the 56 delegates from the West at the ratio of 564 voters for each delegate, represented only 31,584 voters of the 42,016, thus leaving about one-fourth of the qualified voters of the West unrepresented. (See Report of Committee: *Enquirer*, Jan. 27, 1842.)

by the Eastern members of the committee advocated the mixed basis; and, since the apportionment, as it then stood, was practically on that basis, no change at all was thought desirable.[1] Thus the old fight was once more to be waged, and it was still to be a contest between the sections. The West, having a slightly larger white population than the East, contended for the larger representation. The East, paying twice as large a *per capita* tax, claimed the larger representation. In spite of the efforts made by the Western members of the House of Delegates, the matter was postponed indefinitely.[2]

This aroused the West. In the summer of 1842, the struggle over representation was continued with renewed energy. The Western newspapers advised the people to throw aside all party affiliations and, whether Democrat or Whig, to concentrate their forces for Western rights. Feeling ran so high that separation was feared.[3]

The people of Kanawha County held a public meeting to discuss representation. A committee of correspondence, consisting of ten men, was appointed to issue an address.[4] This address stated that great wrongs were being perpetrated on the West, and that there was no hope of the Legislature doing

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[1] The minority report claimed that "persons and property are alike subjects of legislation and entitled to like protection." The East paid more taxes than the West, and should have more representation. Taxation *per capita* in 1841 was for Tidewater, $1.2125; for Piedmont, $1.1044; for the Valley, $0.7171; and for the Trans-Alleghany, $0.3910: *i. e.*, for the East, $1.1543, and for the West, $0.5913. (Minority Report: *Enquirer*, Jan. 27, 1842.)

[2] The vote for postponement was 68 to 56. (*Enquirer*, March 10, 1842.) The Eastern members asserted that the West should not force a reapportionment upon them. A bill to call a constitutional convention was brought in, but was defeated by a vote of 66 to 57. The Western members were so enraged that fifty of them placed a protest on the *Jour. of H. of Del.*, because of the refusal to consider the plan for reapportionment, or for a convention. The protest declared that there was a fixed determination on the part of the East to ignore the West and not to equalize representation at all. (*Enquirer*, Feb. 17, March 10, 29, and April 1, 1842.)

[3] *Enquirer*, July 12, 1842. [4] *Ibid.*

justice. The people of Western Virginia were asked to send delegates to a convention at Lewisburg to consider representation.[1] Accordingly, a convention met in Lewisburg, August 1, 1842. Twenty counties were represented by some fifty or sixty delegates.[2] Resolutions were adopted asking the Legislature to pass a bill, submitting to the vote of the people the question of a constitutional convention to equalize representation on the white basis.[3]

At the next three sessions of the General Assembly, efforts were made to pass a bill for a constitutional convention, but all in vain.[4]

In 1845, the state of representation was warmly discussed. The *Enquirer* came out in forcible terms against the existing system of representation, and said it was folly for the East to try to keep the system unchanged, since it engendered discord, and produced such a strong local and sectional feeling.[5] To

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[1] *Ibid.*

[2] The counties were Harrison, Monongalia, Ohio, Montgomery, Cabell, Mercer, Kanawha, Logan, Greenbrier, Monroe, Alleghany, Fayette, Randolph, Wood, Wythe, Mason, Jackson, Page, Augusta and Wayne. (*Enquirer*, Aug. 18, 1842.)

[3] *Enquirer*, Aug. 19, 1842.

[4] At the session of 1842–43 the proceedings of the Lewisburg Convention were presented, and petitions from Scott, Harrison, Monongalia, Randolph, Marion, Lewis and Greenbrier counties, asking for a convention. Western members worked hard, but the convention bill was defeated in the House of Delegates by a vote of 66 to 55 (a sectional vote). (*Enquirer*, Dec. 13, 15, 1842; Jan. 14, Feb. 2, March 4, 9, 1843.) At the session of 1844–45 petitions for a convention were presented from Hampshire, Lee, Isle of Wight, Fairfax and Monongalia. A special committee was appointed to consider them. It reported in favor of a bill to submit the question to the people, but the matter was indefinitely postponed in the House of Delegates by a vote of 64 to 63. (*Jour. of H. of Del.* (1844–45), pp. 17, 18, 23, 53, 86, 25, 27, 44 and 106: also Bill No. 23, appended to *Journal.*)

[5] Editorial in *Enquirer*, July 22, 1845. This pointed out that the Constitution of 1829–30 created, instead of reducing, a stronger sectional feeling, in that it divided the State into four divisions on the supposition that they had conflicting interests. Thus there were, so to speak, separate states confederated together in one, and each section was made to believe,

show the condition of the State in 1845, I quote the following: "The section below Tidewater which was once populous is in many places almost deserted. The property and the wealth are shifting to other divisions. The section beyond the Alleghany, once the resort of the wolf and the bear, is fast filling up with an industrious, high-souled, thriving population whose wealth is rapidly accumulating and whose immense resources are being daily more and more developed, and yet the same ratio is to be preserved. The people of the East may rely upon it, this state of things cannot last, this injustice will not be submitted to."[1] These utterances are very significant considering that they are from an editorial in an Eastern newspaper.

Memorials were now circulated in the State, some for and some against a convention. County meetings were held in regard to the basis question.[2] One section was arrayed against the other. The West was unanimously in favor of the white basis. From the newspaper discussions we are able to get the following in regard to the East: (1). A majority was opposed to a constitutional convention to settle the basis question.[3]

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unless an improvement was brought within it, it was being taxed for the benefit of the others entirely. The same editorial spoke of the absurdness of an apportionment, by which it mattered not how much the population or wealth of a section might change, yet representation must remain unchanged.

[1] *Enquirer*, July 22, 1845.

[2] *Enquirer*, July 29, Aug. 1, Nov. 25, 28, 1845. The Resolutions of Kanawha County illustrate well the Western position. They stated that the system of representation as it stood was an injustice to the West; that the *white basis* was the only one that would satisfy that section, but it was willing to give a guarantee to the East that slave property should not be overtaxed by the "adoption of a uniform system of *ad valorem* taxation." (*Enquirer*, July 29, 1845.) Amelia County resolutions show that the East distrusted the West, and was opposed to a convention; (1) because, if the West had control of legislation, appropriations for internal improvements would be too large; and (2) because the East with six times as many slaves as the West, could not afford to let the government pass from its hands. (*Enquirer*, Aug. 1, 1845.)

[3] *Enquirer*, Aug. 5, 1845. Some went so far as to denounce the Western people as would-be tyrants, wishing only to get hold of the pocket-book of the East.

(2). Quite a respectable element was for taking the sense of the people on a convention; and, since the East held the Legislature, it could control the convention and adopt its own basis.[1] (3). Some in the East preferred separation from the West to a surrender of their principles.[2] (4). Others favored a convention with the express understanding that the *mixed basis* was to be adopted.[3] (5). A few Eastern men favored a convention to adopt the *white basis* with a guarantee that slave property should not be overtaxed by the insertion in the constitution of a clause for *ad valorem* taxation on all kinds of property.[4]

On the opening of the General Assembly (1845–46), Governor McDowell in his message urged that the convention question be submitted to the vote of the people.[5] Some petitions were presented asking for a convention.[6] A bill was reported for taking the vote of the people, but it also provided that should the people decide for a convention, the organization of it should be on the *mixed basis*.[7] This was an Eastern

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[1] *Enquirer*, Sept. 2, and Oct. 30, 1845 (Fairfax Resolutions.)

[2] *Enquirer*, Sept. 2, 1845. At this time the desire for a division of the State was quite strong in the West. (Resolutions of Greenbrier County, *Enq.*, Sept. 2, 1845.) A majority of the Western people, however, were opposed to a division. (*Enq.*, Nov. 4, 1845.)

[3] *Enquirer*, Oct. 4, 10, 1845, and (Resolutions of Brunswick), *Enquirer*, Sept. 30, 1845.

[4] *Enquirer*, Aug. 12, 22; Sept. 26; Oct. 10, 1845. There is no doubt, however, that a majority of the Eastern people opposed a convention. They saw that the chief desire was to change the basis of representation; and, although they favored other reforms, they preferred to endure the existing evils in order to keep representation unchanged. *Enquirer*, Nov. 7, 1845, and (Cumberland Resolutions) *Enquirer*, Nov. 18, 1845.

[5] The Governor said that the people were the actual parties of the government, and that the Legislature had no right to refuse to let the sovereigns hold a conference on a convention. He wished to see the principal question of dispute, the basis of representation, rearranged in an amicable and satisfactory way, so that the political divisions as they then stood might be forever obliterated. *Jour. of H. of Del.* (1845–46), pp. 14, 15.

[6] *Journal*, pp. 18, 26, 28.

[7] *Journal*, 20; Bill No. 132 (appended to *Journal*): *Enquirer*, Dec. 5, 1845; Jan. 31, 1846.

measure to get control of the proposed convention. The West offered a substitute to have the convention organized on the white basis, claiming that a constitutional convention should be controlled by a majority of the citizens and not a minority.[1] This substitute was defeated by the Eastern members.[2] The whole matter was then indefinitely postponed.[3] There is no doubt that the bill would have passed, had the West been willing to accept the mixed basis for the organization of the convention. But a majority of the Western delegates was in favor of a convention on the white basis or none. The Eastern members would not grant this, and some even asserted that rather than have a convention on the white basis, they would prefer a division of the State.[4]

The discussion, and county meetings and resolutions of 1845, had had no effect. The West could have had a convention, but refused it unless on the white basis. Some of the Western people, however, wanted a convention on any basis, and criticised their delegates for having stood so firmly for the white basis only. Yet a majority in the West did not care for a convention without their plan of organization.[5] A change now occurred, and the East took a firm stand for a convention,[6] but to be organized on the mixed basis. In the West there was a want of harmony: some favored a postponement of a con-

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[1] A minority report, Document No. 27 in the Appendix to *Journal: Enquirer*, Jan. 31, 1846.

[2] *Journal*, pp. 143, 144. An attempt was made to let the people decide on what basis the convention should be organized, but the Eastern members voted this down. (*Journal*, p. 124.)

[3] *Journal*, pp. 144, 155; *Enquirer*, Feb. 20, 1846. The motion for postponement was made by Mr. Flowers of Harrison County, and 31 out of the 56 Western delegates voted for it. Another attempt was made for a convention. A bill to submit simply the question of a "Convention" or "No Convention" was introduced, but this was not satisfactory as neither the East nor the West was willing to pass a bill which did not provide the basis of organization for the convention.

[4] *Enquirer*, Feb. 20, 1846. [5] *Enquirer*, Feb. 27, March 6, 1846.

[6] *Enquirer*, March 16, 31; May 12, 1846.

stitutional convention till after the census of 1850, which would show more plainly the great inequality in representation; others rather than have no convention were for the legislative basis (*i. e.*, delegates apportioned for the convention just as they were in the House of Delegates); others for white basis only as the plan of organization; while others were for any basis of organization, provided they got the convention for reforms.[1] Once more counties began to hold meetings on the question of representation and a constitutional convention. The spirit displayed in the West seemed more liberal than ever, and some of the western counties passed resolutions in favor of a compromise basis for a constitutional convention.[2]

A convention[3] to discuss the question of representation met at Staunton in December, 1846. Some sixty delegates were present, representing some eighteen or twenty counties. Resolutions were passed, asserting that the white people were the only parties in the social compact, and that they only ought to be recognized as a basis for apportioning representation throughout the State. The resolutions also expressed opposition to a constitutional convention (unless organized on the white basis) until after the census of 1850.[4]

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[1] *Enquirer*, Aug. 28, 1846.

[2] Resolutions of Ohio County (*Enq.*, Aug. 28, 1846), and of Marshall County (*Enq.*, Dec. 2, 1846). The *Enquirer* (Sept. 1, 1846) quotes the *Wheeling Argus* as advocating a compromise basis for a convention. This paper (*Argus*) proposed Federal Numbers. The parties in the West, according to it were: (1) *Reformers*, for white basis or none; (2) *Divisionists*, who wanted a separate State; (3) *Reformers* (conservative), for a convention on any basis and for all reforms that they could get; and (4) *Federalists*, for Federal Numbers as a basis for a constitutional convention and the same for the basis of representation in the General Assembly.

[3] A convention to meet at Staunton in August had been proposed by Berkeley County, but so much discussion occurred as to when and where it should meet, and so many different propositions were made in newspapers, that very few delegates assembled at Staunton in August, so they adjourned to reassemble in December. (*Enquirer*, July 29; Aug. 1, 11, 28, 1846.)

[4] Proceedings of Staunton Convention: *Enquirer*, Dec. 15, 1846.

At the next three sessions of the Legislature, bills were introduced to call a constitutional convention, but on each occasion they were rejected.[1]

Eastern Virginia now began strongly to advocate a constitutional convention, not to grant the demands of the West on representation, but to institute other reforms.[2] The matter was urged by the press in all parts of the State.[3] When the Legislature met in December, 1849, the Governor's Message brought to its attention the expediency of a convention for

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[1] At the session of 1846–47, the Governor in his Message advised a convention. (*Enquirer*, Dec. 8, 1846.) The matter was considered by the House of Delegates. There was great division among the Western members. Some favored taking the sense of the people without any plan of organization for the convention, while others were for postponing the question till after the census of 1850, and expressed fear that the East would force a convention upon them before that time. (*Enquirer*, Dec. 10, 15, 1846; Jan. 30, 1847.) At the session of 1847–48, an attempt was made to reapportion representation, and a committee was appointed, but at its request was discharged. (*Enquirer*, Jan. 21, 1848.) At this session the West became incensed at an action of the East. The constitution provided that the number of delegates from the different sections should neither be increased nor diminished except by two-thirds vote of the Legislature. But now one delegate was given to Alexandria, which had just been given back to Virginia by the Federal Government. This increased the Eastern delegation by one, making the House of Delegates 135. Mr. J. M. Stephenson, a Western delegate, entered a protest, declaring the whole proceeding unconstitutional, since it had passed by a vote of 60 to 59, and not a two-thirds vote. The West considered this an act of injustice. (*Enquirer*, Dec. 21, 27, 1847; Feb. 25, 1848.) At the next session (1848–49), Governor Smith in his Message advised a convention; a committee was appointed, but reported that it was inexpedient to call a convention at that time, so the matter was dropped. (*Jour. of H. of Del.*, 1848–49, pp. 29, 115, 117, 326.)

[2] Eastern reformers were for: (1) extension of suffrage and prevention of double voting, (2) reform in county courts, (3) limitation on the Legislature in regard to taxation, (4) reform of the judicial system, (5) abolition of Executive Council, and (6) election of Governor and other officers by the people. (Resolutions of Powhatan County; *Enquirer*, Jan. 22, 1850.)

[3] *The Charlottesville Jeffersonian*, *The Lynchburg Republican*, *The Petersburg Republican*, *The Lynchburg Virginian*, *The Danville Register*, *The Staunton Vindicator* and *The Rockingham Register* as quoted by *Enquirer*, Dec. 4, 14, 21, 28, 1849.

reform.[1] The House of Delegates took the matter up, and appointed a committee to bring in a bill.[2] The bill, as reported, was to submit to the vote of the people two questions: (1) whether there should be a constitutional convention or not, and (2) whether it should be organized on the white or mixed basis.[3] The Western members spoke for a convention, but said that, while the East wanted reform in the judicial system, etc., they wanted a change in representation, and would not be satisfied with the mixed basis for the organization of the convention, but were willing to take the vote of the people to decide what basis should be used.[4] However, the Eastern members moved and carried a substitute adopting the mixed basis for the convention.[5] The convention bill, thus amended, passed the House of Delegates by a vote of 78 to 42,[6] and the Senate by 17 to 11.[7] The act provided that, at the April elections (1850), the vote of the people should be taken on a constitutional convention, and that the returns be made to the Governor, who, on or before the third Monday in June, should proclaim the result. If a majority was found for a convention, on the fourth Monday in August an election was to be held for delegates. The total number of delegates was to be one hundred and thirty-five. The act then enumerated the districts and the number of delegates for each.[8] The supposed white population in 1849 was 887,717, and the Revenue

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[1] Governor Floyd's Message, *Documents of H. of Del.* (1849–50): Doc. No. I, p. 10.

[2] *Enquirer*, Dec. 7, 1849.

[3] *Enquirer*, Feb. 26, 1850.

[4] *Enquirer*, Dec. 7, 1849.

[5] *Enquirer*, Feb. 12, 1850. The vote was 65 to 57. The Western members voted unanimously against it.

[6] *Enquirer*, Feb. 19, 1850. Most of the votes against a convention were from the West, but some twenty voted for it, as they preferred a convention on the mixed basis to none at all.

[7] *Enquirer*, March 15, 1850. The 11 votes against the convention were from the West.

[8] *Acts of Assembly* (1849–50), p. 9, *et seq.*

Tax was $472,516.31;[1] and, since the apportionment for the convention was to be on the mixed basis (taxation and white population combined) every $7000.24 elected one delegate, and every 13,151 white persons, one delegate. This meant that in the convention every white person was to have just a little more than half as much weight as a dollar in taxes. The apportionment was for Tidewater, thirty-eight delegates; Piedmont, thirty-eight; the Valley, twenty-four, and the Trans-Alleghany district, thirty-five. Had the apportionment been on the white basis, Tidewater would have had twenty-nine; Piedmont, thirty-two; the Valley, twenty-five, and the Trans-Alleghany district forty-nine.[2] In other words, the convention organized on the mixed basis was to have seventy-six delegates from the East and fifty-nine from the West, an Eastern majority of seventeen; but on the white basis, the East would have had only sixty-one, and the West seventy-four, a Western majority of thirteen. No wonder the West fought so hard for the white basis and said so much against the East.[3] On the other hand, is it strange that the East,

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[1] Doc. No. 31, *Documents of H. of Del.*, 1849–50.

Tidewater district had a white population (1849), 192,660, and paid taxes (1849) $163,977.25.

Piedmont district had a white population (1849), 209,970, and paid taxes (1849) $155,512.07.

Valley district had a white population (1849), 160,557, and paid taxes (1849) $77,512.36.

Trans-Alleghany district had a white population (1849), 324,530, and paid taxes (1849) $75,454.63.

[2] Cf. Documents Nos. 31 and 40; *Documents of H. of Del.*, 1849–50.

[3] *Enquirer*, Feb. 22, 26; March 1, 1850.

Many Western members of the General Assembly denounced in strong terms the action of the Eastern members in forcing upon them a convention on the mixed basis simply (as they thought) to protect slaves. They were hurt to think that the East could not trust them for fear they would be plunderers of property. A bitter feeling existed, and fear was expressed that the Trans-Alleghany section would not submit to the convention plan at all. The reforms advocated at this time by the East (*i. e.* extension of suffrage, election of Governor and county officials by the people, etc.) were

paying twice as large a tax as the West, and conscientiously believing that property should be an element in representation, should have striven for the mixed basis?

The fight over the convention was quite vigorous throughout the State. Many in the West were endeavoring to defeat the measure,[1] while the East hoped to have the convention bill approved by the people.[2] When the elections were held in April, quite a good majority was cast in favor of the convention.[3] With some exceptions the counties in the Trans-Alleghany district gave large majorities against the convention,[4] but the whole Valley and all the Eastern counties except two[5] were in favor of the convention.

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for the most part what had been championed by the West in the Convention of 1829–30, and were conceded to be the true republican principles. But that representation should be based on the white population, the East as yet did not accept, and the West believed that it was not from principle but from distrust.

[1] The West opposed the measure, thinking it a trick on the part of the East to have a convention before the census of 1850, and also that the mixed basis of organization was only an indication of what the East would put in the new constitution. (*Enquirer*, March 5, 1850.) The West wanted the people to vote on the basis question, and, since the East was afraid to allow this, it talked of separation. (*Enquirer*, April 9, 1850.) The Trans-Alleghany district was especially opposed to a convention organized on the mixed basis, because each of its delegates would represent 9,292 whites, while each Tidewater delegate would represent only 5,070 whites. (Doc. No. 40, p. 9: *Documents of H. of Del.*, 1849–50.)

[2] The people of the East were urged to vote for a convention, since there was no fear that the West would control it; that then was the chance to get the mixed basis adopted and to put through some needed reform. (*Enq.*, April 18, 1850.) There was also a desire in the Valley for the convention. The population and wealth of the Valley was such that either the white or mixed basis gave it practically the same representation, hence this portion of the West, though preferring the white basis, voted for the convention. (*Enquirer*, April 19, 1850: Doc. 30, *Documents of H. of Del.*, 1849–50.)

[3] Returns (MS.): *State Papers* (1850). Returns are wanting for 9 counties: 4 from the Trans-Alleghany, 3 from the Valley, and 2 from the East.

[4] Returns for 43 counties west of the Alleghany. Twenty-nine gave majorities against the convention, and in these only a few votes were cast for the convention.

[5] Warwick and Amelia counties.

In August delegates were elected to the convention. The candidates declared through the papers, and on the stump, their views on the basis question, which was made the main issue in the elections.[1] In the East only one man came out in violent opposition to the mixed basis.[2] This was Henry A. Wise of Accomac. He advocated the *suffrage basis* which the West had advocated in the Legislature of 1841–42. He wanted, however, a constitutional guarantee to prevent excessive taxation.[3] The West rejoiced in the support of so eminent a man, but in the East he was spoken of as the "modern Jack Cade."[4] Yet Wise was so popular among his constituents, that, in spite of the fact that his views were contrary to theirs, he was elected a member of the convention. He was the only man elected in the East in opposition to the mixed basis.[5] Not a member elected from the West favored the mixed basis.

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[1] *The Whig* (June 1, 18; July 4, 9, 12, 16, 17, 19, 23, 26, 30, 31; Aug. 6, 9, 13, 20, 1850) contains announcements from candidates advocating the mixed basis and letters to the number of twenty-seven. *The Whig* was for the mixed basis or none. For the white basis we find in *The Whig* of the above dates only three articles, two of these announcements from candidates.

[2] See his Announcement: *Whig*, June 1, 1850. [3] *Ibid.*

[4] *Whig*, June 18, July 19, 1850. [5] *Whig*, Sept. 13, Oct. 18, 1850.

## CHAPTER VI.

### The Reform Convention of 1850–51.

The Convention met in Richmond on the 14th of October, 1850. Of the one hundred and thirty-five members, six had been members of the Convention of 1829–30.[1] John Y. Mason was elected President.[2] It was decided to wait for the census, so the Convention adjourned November 4, 1850, and reassembled January 6, 1851, and remained in a continuous session till August 1, 1851. This Convention is usually spoken of as the "Reform Convention" because of the many salutary reforms accomplished.[3] The fight was chiefly on the basis of representation, which consumed most of the time and attention of the Convention. Eight committees were appointed to consider the different questions of interest.[4] The most important was the "Committee on the Basis and Apportionment of Representation," consisting of twenty-four members. George W. Summers of Kanawha was Chairman. This Committee reported February 6, 1851.[5] It was unable to agree, one half holding to one basis, while the other half advocated a different basis. Two propositions were, therefore, submitted; one

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[1] John Y. Mason, William O. Goode, J. Boyer Miller, James Saunders, William Smith and Archibald Stuart. Cf. Lists: *Proceedings and Debates of Convention* (1829–30), pp. 3, 4, and *Journal of Convention* (1850–51), pp. 423, 424.

[2] *Journal*, p. 5.

[3] Extension of suffrage, Governor to be elected by the people, abolition of the Executive Council, reform of the judicial system, and the election of county officers by the people.

[4] *Journal*, pp. 58, 59.

[5] *Journal*, p. 107: *Debates*, pp. 145, 146.

marked "A," that advocated by the Eastern members of the Committee, and the other marked "B," the Western proposition.[1]

Proposition "A" was a House of Delegates of one hundred and fifty members chosen biennially, and a Senate of fifty-one chosen for four years. Both houses were to be apportioned on the mixed basis, and, in 1862 and every ten years after, a reapportionment was to be made on this basis.[2] Proposition "B" was a House of Delegates of one hundred and fifty-six, and a Senate of thirty-six. The qualified voters were to be the basis of representation (suffrage basis). The apportionments reported with "B" were based on the white population which was to continue till an enumeration of the voters could be made; but, in 1855 and every ten years after, an enumeration of the qualified voters should be made, and the following General Assemblies were to reapportion on this basis.[3]

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[1] See the *Documents of Convention* for both propositions.

[2] One-seventy-fifth part of the whites was to elect one delegate, and one seventy-fifth part of the taxes raised by the Legislature (deducting therefrom all taxes on licenses and law processes) to elect one. The Senate was to be distributed in the same way. The amount of taxes was to be estimated by an average of the ten preceding years. The House of Delegates on this basis was: The West for a white population of 494,763 would have 41.42 delegates, and for $185,316.37 taxes, 26.09 delegates, making 67.51; *i. e.*, 68, delegates. The East for a white population of 401,104, to have 33.58 delegates, and for $347,348.09 taxes, 48.91 delegates, making 82.49; *i. e.*, 82 delegates. (See Proposition "A" in Appendix to *Journal*.) Thus the East had a majority of 14 with a white population less than the West by 93,559. The Senate on the same basis was to be 23 from the West and 28 from the East. This plan meant that every 70 cents in taxes was to have a representation equal to one white person. (Sheffey's *Speech*, p. 9: *Debates*.)

[3] *Journal* (Documents in Appendix): *Debates*, pp. 146–147.

By this plan every delegate was to represent 5,740 white persons, and every senator, 24,870. This gave the West 85 delegates and the East 71; the West 19 senators and the East 17. (Documents.) Now the mixed basis, as seen in the note above, gave the East in the House of Delegates a majority of 14, while the white basis gave the West a majority of 14; hence it is at once plain why the fight between the sections was so sharp.

The basis question was taken up in the Committee of the Whole, and, from the 17th of February to the 16th of May, the discussion was almost exclusively on this subject.[1] The debate[2] is too long for anything like a full synopsis, so only a few of the main features will be presented. The East advo-

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Here it may be well to state the sources for this Convention. There is a Journal in two volumes. The first volume contains the Journal proper and some documents, while the second volume contains documents only. In the Va. State Library there is one volume of the Debates of this Convention. This contains the speeches from Jan. 6, to Feb. 24, 1851. The rest of the debates, printed in the so-called "Supplement" which was sent out with all the newspapers, I have been unable to find.

[1] Every effort was made by both the East and the West to carry their points. Public meetings were held by the counties throughout the State to express their views and to instruct their delegates on the basis question. No less than 37 meetings were held while the Convention was in session. These were reported to the Convention and their resolutions printed in the papers. These were often bitter and opposed to any compromise. The Eastern counties contended for mixed basis or none, while the Western counties were for the white or suffrage basis. A good specimen of the Western resolutions is those of Pocahontas County, which, after stating that the East intended to force the mixed basis on the West, passed the following: "*Resolved*, That defective as is our State policy in many other respects, we regard the basis of representation as paramount to all others, and we will accept no constitution that does not contain the white population as the basis of representation in the councils of the State; and we hereby pledge ourselves to do everything in our power to defeat the adoption by the people of any constitution which does not confer equality of political right upon the people of every portion of the State." References for this note: *Journal*, pp. 107, 180, 192, 193, 185, 159, 233, 243, 244, 247, 251, 264, 265, 270: *Debates*, pp. 57, 100, 307: *The Whig*, April 8; May 13, 30; June 10, 13, 17, 20, 27; July 1, 4, 15, 22, 25, 1851.

[2] The debate was well arranged. To quote a contemporary account: "The Battle of the Basis is fought with as much science, system and leisure as the campaigns of Marlborough. The speeches are elaborate; they contain little that is new, or calculated to retain attention of men who have ridden on the basis, slept on the basis, dined on the basis for six months past!" (*Whig*, March 24, 1851.) The people of the State became tired of the debate, and even the members of the Convention paid little attention after they had made their speeches. "Those who have discharged their duty to their constituents, look with interest to the historical records of the forthcoming 'Supplement,' and chew peanuts in all the dignity of perfected renown." (*Whig*, March 24, 1851.)

cated the mixed basis on the following grounds:[1] (1). One principle of government is protection of property, and this can be done best by allowing it representation.[2] (2). The *white* or *suffrage basis* would give control to a section paying about one-third of the taxes, which would be unjust.[3] (3). By suffrage or white basis a *numerical* majority would rule, while a minority having a majority of interests and wealth would be ignored.[4] (4). It would be unsafe to trust the government to the West as it might increase the State's burdens for internal improvement.[5] (5). Western Virginia being essentially a non-slaveholding section, the government once in its hands might overtax or abolish slavery.[6] (6). The West traded with Baltimore; and, if it once controlled the government, appropriations might be made to extend the railroad connection between Winchester and Baltimore so as to take all the trade from the West and Southwest out of the State.[7]

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[1] The speeches used on the mixed basis are those of Messrs. Stanard, Barbour, Perkins, Beale, and Scott of Fauquier.

[2] *Debates*, p. 284.

[3] *Debates*, p. 284.

[4] Barbour's *Speech*, p. 7 (in *Debates*).

[5] *Ibid.*, p. 10. The West offered guarantees to be embodied in the constitution that the burdens of the State should not be increased, and that slave population should not be overtaxed. The East considered these as nothing, as, the power once in the hands of the West, another constitutional convention could be called and all restrictions removed. (Barbour's *Speech*, p. 11.)

[6] Barbour's *Speech*, p. 12. There was a feeling in the West for the abolition of slavery. In 1832, when a bill was introduced in the Virginia Legislature to provide for the abolition of slavery every man from the West voted for it. The Trans-Alleghany district, if it continued to increase in population as it had, would at some day with the white basis have full control of the government, and this the East argued would be ruinous to slave property. (Stanard's *Speech*, p. 16.) The Trans-Alleghany district had, according to the census of 1850, only 24,436 slaves, and the rest of the State, 450,155 slaves. The white population west of the Alleghany was 331,586, and the rest of the State 567, 548. Distrust of this Trans-Alleghany section seems to be the main reason why the East stood for the *mixed basis* to protect property.

[7] Stanard's *Speech*, p. 20.

The West argued for the suffrage or white basis, and had a very staunch ally in Henry A. Wise, who evidently had considerable influence from the fact that, although he favored a Western measure, he was an Eastern man.[1]

The arguments[2] for the suffrage or white basis were somewhat as follows: (1). The government resides in the people, and the laws are for their protection. The origin of the social compact was for personal rights, the preservation of life and liberty, and not for the protection of individual property, as the right to separate or individual property was a concession of society.[3] (2). All voters in the eyes of the government should be equal, and, therefore, every voter should have an equal representation without regard to property.[4] (3). The mixed basis meant a rule of the minority which was unrepublican.[5] (4). Slave property would not be endangered by the suffrage or white basis. The Valley and some few of the Trans-Alleghany counties had so many slaves, that they with the East would amply protect slavery.[6] The *ad valorem* system

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[1] Wise spoke for five days. *The Whig* said his speech was revolutionary in doctrine and socialistic, and that the whole burden was abuse of the rich, the aristocrats. Yet we are told that his speech produced a great impression, and, though Booth was playing Hamlet at the theatre, Wise drew the crowd. His speech was spoken of as undoubtedly one of the best delivered. *Whig*, May 2, 1851.

[2] For these we have consulted the speeches of Messrs. Sheffey, Willey, Lucas, Carlile, and Smith of Greenbrier; also as much of Wise's speech as was accessible. George W. Summers was a faithful champion of the West, but we have not been able to find his speech.

[3] Sheffey's *Speech* (Appendix to *Debates*), pp. 3–5. Sheffey thought that the best plan was to refer the whole matter to the vote of the people; that they were the sovereigns and ought to decide what principle of representation they wanted.

[4] Proposition "B" in Documents. The suffrage basis was the Jeffersonian principle of representation, and was in accord with the natural rights of man. (*Debates*, p. 468.)

[5] Sheffey's *Speech*, p. 6.

[6] Sheffey (*Speech*, p. 16) said that the average portion of slave property was 33 per cent. Fifteen counties West had nearly this. These in a House of Delegates of 156, on the suffrage basis would have 22 delegates, and the East 70, so the slave portion of the State would dominate.

of taxation would be another protection. Whatever oppressed the majority in society would oppress the minority, and *vice versa*, when taxation is equal on all classes.[1] (5). The internal improvements would be benefited, "log-rolling" would be broken up, and the great schemes would be carried through at no greater cost.[2]

The arguments of both sides were repeated over and over again, each member feeling that it was his duty to add something to the debate for the cause of his constituents.

On the 17th of February (the day on which the debate began), Mr. Scott of Fauquier proposed a plan as a substitute for those reported by the Committee. This was nothing more than "A" (the mixed-basis plan) with restrictions on representation from towns, as was the case in South Carolina.[3] The debate continued on this till about the first of April, when some Eastern (mixed-basis) men expressed a desire for a compromise basis rather than restrict town representation.[4] It also became evident to some that, if the mixed basis was forced upon the West, it would result in a division of the State.[5] So, on the 21st of April, John Minor Botts proposed a compromise which was to give equal representation in both houses of the General Assembly to each of the great sections.[6] A vote was taken on propositions "B" (suffrage basis) and "C," and both were defeated.[7] Botts now withdrew his amendment to

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[1] Sheffey's *Speech*, p. 8.

[2] Sheffey's *Speech*, p. 12. It was further argued that the interests of the two great sections of the State were not so different that one section should be afraid to trust the other, and that, unless the Western people were treated as Virginians, and not as plunderers of property and abolitionists, a division of the State would ensue. (*Debates*, pp. 355–57.)

[3] See *Debates*, p. 254: also *Documents*, "C." [4] *Whig*, April 8, 1851.

[5] *Whig*, April 15, 1851 (Botts's Letter to his Constituents).

[6] See Botts's Amendment in Documents, and *Whig*, April 22, 1851. This plan was first suggested by Tazewell Taylor of Norfolk. (*Whig*, April 8, 1851.)

[7] *Journal*, Appendix, p. 3. Mixed-basis men voting against "C" were Messrs. Chilton, Bowden, Saunders, Botts and Randolph.

await the will of his constituents in Richmond, where a poll was to be taken on the basis question.[1] There was now much confusion.[2] No plan was being considered except proposition "A" (mixed basis). The East had the power to adopt this, but did not do so for fear the West would withdraw from the Convention.[3] At this point, May 8, Mr. Summers proposed as a compromise from the West that a constitution be adopted and submitted to the people without any basis, but, at the same time, that a separate poll be held to allow the people to decide between the *suffrage* and the *mixed* basis. This was rejected by the Eastern members.[4]

On the 9th of May a motion was made to strike out proposition "A," but failed by a vote of 58 to 62.[5] It seemed certain that the mixed basis would now be adopted; but the West became so aroused, and affairs were at such a crisis that, on May 10, when the Convention met, it was thought advisable to adjourn for the day.[6] A caucus was held by the mixed basis advocates, and they invited the suffrage-basis party to a conference.[7] Compromise propositions were then submitted by both sides.[8] A comparison of the plans shows that the

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[1] *Whig*, May 2, 1851. [2] *Ibid.*

[3] *The Whig* (April 9, 1851, Remarks of Mr. Scott of Fauquier) states that a month before this the Governor-elect, Joseph Johnson, of Harrison County, and other members from his section had threatened to leave the Convention, and to advocate a division of the State unless the suffrage or white basis was adopted.

[4] *Journal*, Appendix, pp. 7, 8. [5] *Ibid.*, pp. 9–10.

[6] *Whig*, May 27, 1851; Randolph's Letter to his Constituents: also Stanard's *Speech* (*Debates*), p. 26.

[7] *Ibid.*

[8] *Whig*, May 23, 1851; and Stanard's *Speech*, pp. 33–34. The East submitted the following plans of compromise: (1) House of Delegates, 156; suffrage basis: Senate, 50; taxation alone as basis. (2) House of Delegates, 150; 85 to West and 65 to East: Senate, 50, based on taxation only. In 1862 and every ten years after, the House to be apportioned on suffrage basis, and Senate on taxation. (3) House of Delegates, 150, on mixed basis; Senate, 50, on suffrage basis: Reapportionment every ten years on the same plan. The West proposed: (1) House of Delegates on mixed basis, and

East proposed no plan which would ultimately provide for the adoption of the suffrage or white basis, while the West was unwilling to accept anything which did not provide for the suffrage basis or for submitting the question to the vote of the people. The result of the conference, therefore, was that each side rejected the plans of the other. The Western members in their caucus then passed resolutions, declaring that they would not accept any compromise which did not eventually provide for the adoption of the suffrage basis or for submitting the question to the vote of the people.[1]

On the 12th of May a committee of eight was elected to prepare a compromise plan.[2] On the 15th of May they[3] reported a plan providing for a House of Delegates of one hundred and fifty members,—eighty-two from the West and sixty-eight from the East, and a Senate of fifty,—thirty from the East and twenty from the West. In 1865, the Legislature should reapportion representation in both houses, and, if unable to agree, the question was to be submitted to the people whether apportionments should be on the suffrage or mixed basis. This was rejected by the close vote of 55 to 54.[4] On motion of Henry A. Wise, proposition "A" which had remained before the Convention was rejected.[5] Botts's amend-

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Senate on suffrage basis, but, in 1862 and every ten years after, both houses to be reapportioned on suffrage basis. (2) Same as the first, except in 1862 the vote of the people should decide whether the mixed or suffrage basis should be adopted. (3) House of Delegates, 156, on suffrage basis: Senate, 50, on taxation alone, but in 1862 both houses to be reapportioned on the suffrage basis. (4) Mixed basis for both houses till 1862, when both were to be reapportioned on the suffrage basis.

[1] *Whig*, May 13, 23, 27, 1851.

[2] Seeing that the Convention was in danger of separation on the basis question, Mr. Martin of Henry, a mixed-basis man, made the motion for this committee, four from the East, and four from the West. Messrs. Summers, Martin of Henry, Wingfield, Lucas, Finney, Caperton, Chilton and Letcher were elected by the Convention as this committee. (*Journal*, pp. 206, 208, 216.)

[3] All concurred except Finney. (*Whig*, May 16, 1851.)

[4] *Journal*, Appendix, pp. 11, 12. [5] *Journal*, Appendix, p. 13.

ment was now brought up and rejected. Wise and Finney offered plans, but both were defeated. The proceedings became ridiculous, proposition after proposition being proposed and rejected.[1] Mr. Chilton now introduced a plan, the same as the report of the committee of eight, except, should the Legislature in 1865 fail to reapportion representation, the Governor should submit to the people four propositions: (1) the suffrage basis, (2) the mixed basis, (3) the white population and (4) taxation only. This was carried in the Committee of the Whole by a vote of 55 to 48.[2] In the Convention this was amended so that, should the Legislature in 1865 fail to agree on a reapportionment, each House should propose its schemes of representation, and transmit them to the Governor who should submit them to the vote of the people. If the Legislature neither apportioned representation nor proposed the schemes, then the Governor should submit to the voters the following: (1) The suffrage basis for both Houses; (2) the mixed basis for both Houses; (3) taxation only for the Senate and the suffrage basis for the House of Delegates, and (4) the mixed basis for the Senate and the suffrage basis for the House of Delegates. In case none of these propositions received a majority of the votes cast, the two having the largest number of votes were to be again submitted to the people.[3] As thus adopted, the clause on representation was embodied in the constitution with one change; namely, the House of Delegates was increased to one hundred and fifty-two, giving one delegate more to each of the two sections.[4] This compromise

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[1] *Journal*, Appendix, pp. 14–17.

[2] *Journal*, Appendix, pp. 18–22. The mixed-basis men who voted for it were Messrs. Arthur, Bowden, Chilton, Claiborne, Martin of Henry, Randolph and Wingfield. (*Whig*, May 23, 1851.)

[3] *Journal*, pp. 220–225.

[4] *Journal*, p. 409; *Code of Va.* (1860), pp. 39–43. The constitution provided that the General Assembly should meet biennially. The delegates were to be elected biennially, but the senators for four years, half every two years. Any qualified voter except a minister of the gospel, or an officer of a banking corporation, or an attorney for the commonwealth, could be a

gave the West eighty-three delegates and the East sixty-nine. The apportionment for the House was on the *suffrage or white basis*, according to the census of 1850. The Senate, thirty from the East and twenty from the West, was based on an arbitrary apportionment, giving a majority to the East less than on taxation alone, but twice as large as on the mixed basis.

The people of the East expressed strong disapproval of this compromise. They urged a division of the State rather than submit to it.[1] Every influence was brought to bear on the

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member of the House of Delegates, or of the Senate provided he was 25 years old.

Suffrage was extended to all persons (male whites) over 21 years of age. The Governor was to be elected for four years by the vote of the people.

[1] About 14 Eastern counties passed resolutions in opposition to this compromise, contending that the East should hold fast to the mixed basis and not yield anything to the West. Some counties urged their delegates to vote for a *sine die* adjournment of the Convention so as to keep the Constitution of 1830 in force, and some declared for a division of the State rather than accept a compromise. (*Whig*, May 30; June 5, 17, 24, 27; July 1, 4, 22, 1851.) Rockingham County, for instance, said that a division would be the "best solution of existing difficulties, and the most soothing compromise of conflicting and otherwise irreconcilable interests." Letters in the newspapers also show the Eastern opposition to the compromise. According to these the white basis had been really established, and slave owners would no longer be recognized in the government, and their property would be oppressed. (*Whig*, May 30, 1851.) Those Eastern Virginians who had voted for the compromise were branded as "base Judeans" and "vile traitors." (*Whig*, May 30, June 17, 27.) It was thought advisable to organize the two sections into two states, since the difference in the character and interests of the people was so great. The West would be an abolition state and would harbor fugitive slaves, but this would be better than Western domination. This, of course, was not the feeling of the majority of the Eastern people, but some of the older inhabitants have informed me that the sentiments expressed in these letters were prevalent in the East. The mere fact that Littleton W. Tazewell (*Whig*, July 1) should have advocated a division, and that resolutions passed by four Eastern counties, Southampton, Buckingham, King and Queen, and Mecklenburg (*Whig*, June 17, July 1, 4, 22) should have favored the same in preference to a surrender of the mixed basis, shows that the divisionists in the East were not wholly insignificant.

Convention to get it to reconsider the basis question,[1] but the Convention would not reopen the discussion, and the compromised plan, as stated above, went into the constitution which was adopted by the Convention, August 1, 1851.[2]

The new constitution, on the 4th Thursday in October, 1851, was ratified by an overwhelming majority, 75,748 votes being cast for ratification, and only 11,063 for rejection.[3] The West had won in the fight, and now had a majority of four on joint ballot of the two houses of the General Assembly. Under the former system of representation the West had only 41 per cent. of the members in the Legislature; it now had 51 per cent.

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[1] A public meeting in Albemarle by an almost unanimous vote instructed their delegate, T. J. Randolph, who had voted for the compromise, to move a reconsideration of the same. (*Whig*, May 30, and July 15, 1851.) Gloucester County asked its representative, Bowden, to resign. (*Whig*, June 10.) Wingfield, another Eastern man who had voted for the compromise, was requested by his constituents to move a reconsideration. (*Whig*, July 4.) These attempts were made several times, the last on July 26, just five days before the Convention adjourned *sine die*. (*Journal*, p. 385.)

[2] The vote for the final adoption of the constitution by the Convention shows that all the members from the West except one, and about one-half of the Eastern members voted for the constitution. (*Journal*, p. 419.)

[3] See Returns (MS): *State Papers* (1851). The small vote for rejection was principally in the East, but even here only five counties, Amelia, Louisa, Prince George, Southampton and Warwick, gave majorities for rejection. Others probably would have given majorities against the constitution, but for the fact that all to whom suffrage has been extended voted for the constitution. Suffrage was extended by more than 50 per cent. The newspapers from the adjournment of the Convention till the election in October show the state of feeling at the time. The East had cooled down, and did not urge the rejection of the constitution so violently as one might suppose after the heated strife in the Convention. However, we find some advocating the rejection of the constitution on account of the principles of representation, though the other reforms were considered wholesome. Yet all thought that the constitution would be adopted, and both the Democrats and Whigs held conventions, and nominated candidates for the offices to be filled under the new constitution, even before its ratification. (*Whig*, August 29; Sept. 20, 1851.)

The basis question was now settled, or rather a plan was adopted for its final settlement. Sectional feeling ceased. Every one rejoiced that at last there was peace in the State. A division, however, was near at hand, a division which showed that a greater part of the people of the Trans-Alleghany district, the section which the East claimed was especially antagonistic to slave property and filled with "Northern ideas," was really of a different sentiment from the rest of the State.

## CHAPTER VII.

### The Present System of Representation.

The provisions of the Constitution of 1851 in regard to the basis of representation were never carried out. The secession movement came on, and February 13, 1861, a Convention was called at Richmond, which, after vain efforts for reconciliation, finally passed an ordinance of secession by a vote of 81 to 51.[1] The section west of the Alleghany Mountains opposed secession, so organized a government to act in concert with the Union, and called it the Government of Virginia.[2] Francis H. Peirpont was made Governor.[3] A constitutional convention was called, and a constitution for West Virginia adopted, February 18, 1862.[4] Then in May, 1862, a Legislature met at Wheeling, claiming to be the Legislature of Virginia, though composed entirely of men from the Trans-Alleghany counties (about one-third of the counties of the State), and passed a bill giving the consent of the *State of Virginia* to the

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[1] *Code of Virginia* (1873), pp. 2, 8. [2] *Ibid.*, pp. 8, 9. [3] *Ibid.*, p. 11.

[4] *Ibid.*, p. 13. In regard to representation this constitution stated that white population should be the basis. There were to be 18 senatorial districts as nearly equal as possible in white population, and in the House of Delegates every county was given a representative or representatives where it was possible. But where several counties were made into districts to equalize the population, the constitution provided for rotation between the counties in electing delegates in proportion to the population of each county. For example, if two counties together elected one delegate, and one county had twice as large a population as the other, a resident of the larger county was to be elected for two terms and a resident of the smaller county for one term. (West Va. Constitution: *Poore's Constitutions*, II, p. 1981.)

formation of this new State.[1] By a proclamation of the President of the United States issued the 19th of April, 1863, West Virginia was to become a part of the Union in sixty days after this proclamation.[2]

The Peirpont Government, having accomplished the dismemberment of Virginia, was, in 1863, transferred from Wheeling to Alexandria.[3] The General Assembly held at Alexandria passed a bill calling for a convention to frame a constitution for the remaining portion of Virginia.[4] A convention accordingly assembled at Alexandria, February 13, 1864.[5] Very few counties were represented,[6] but a constitution[7] was adopted. This was never submitted to the people for ratification.[8]

This Alexandria Constitution was never considered as the constitution of the State, although President Johnson by his proclamation recognized the Alexandria Government as the legal government of the State, and Peirpont as Governor.[9] This Government at the close of the civil war was moved to Richmond. Over this was the military commander, Gen. J. M. Schofield, and by his appointment Peirpont was superseded, April 6, 1868, by H. H. Wells.[10]

By two acts of Congress (one of March 2 and the other of March 27, 1867) the Federal Government provided for the reörganization of the State Governments.[11] The commander in each military district was instructed to take, before September 1, 1867, a registration of all persons entitled to vote.

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[1] *Code of Va.* (1873), p. 14. Under the constitution of U. S. it was necessary that the Legislature of Virginia should consent to the new State (U. S. Const., Art. IV, Sect. 3, cl. 1.); hence we see one-third of the State claiming to be the State.

[2] *Code of Va.* (1873), p. 15. An act for the admission of West Virginia as a State had passed Congress, Dec. 31, 1862.

[3] *Code of Va.* (1873), p. 18. [4] *Acts* (Alexandria), 1863–64, p. 4.

[5] *Code of Va.* (1873), p. 18. [6] *Ibid.*

[7] *Constitution in Acts* (Alexandria), 1865–67, p. 757, *et seq.*

[8] *Code of Va.* (1873), p. 18. [9] *Ibid.*, p. 23. [10] *Ibid.*, p. 25.

[11] See Acts in *Documents of Convention*, 1867–68, p. 8, *et seq.*

But all persons who had held any military or civil office (no matter how insignificant) under the United States or any State and had taken the oath of allegiance to the United States, and afterwards had in any way aided the "rebellion," were disfranchised. An election should then be held to take the sense of the registered voters for calling a constitutional convention and to elect delegates to the same. The basis of representation for the convention was to be the registered voters.[1]

The provisions of these acts were carried out in Virginia by General Schofield, and October 22, 1867, was appointed as the day for the election of delegates and for taking the sense of the qualified voters on a convention.[2] Schofield apportioned the one hundred and five delegates of which the convention under the acts of Congress was to be composed. He was accused of gerrymandering, but for this accusation there seems to be no grounds.[3]

The vote of the people declared in favor of the convention. The contest was between the races, the whites against the convention, and the blacks almost unanimously for it.[4]

The Convention assembled in Richmond, December 3, 1867, and remained in session till April 17, 1868. It was composed of eighty-one whites and twenty-four negroes.[5] According to parties there were sixty-eight "Radicals" or Republicans, and thirty-seven Conservatives or Democrats. Thirty-three members were non-natives of the State, persons who had come to

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[1] This basis did great injustice to the whites, as so many had been disfranchised. All the negroes, however, over 21 years of age had the right to register; hence taking the registered voters as the basis for the convention was a measure favorable to the blacks and much disliked by the whites.

[2] *Documents of Convention* (1867–67), p. 15. [3] *Dispatch*, Oct. 31, 1867.

[4] The numbers of registered voters were 225,933; whites, 120,101, and colored, 105,832. At the election on the convention, 76,084 whites and 93,145 negroes voted. The vote for the convention was 107,342, of which only 14,835 were whites, and against the convention was 61,887, of which only 638 were negroes. See *Documents of Convention* (1867–68), pp. 52, 56.

[5] *Dispatch*, April 20, 1868.

Virginia from the North immediately after the civil war.[1] The "Radical" party of sixty-eight contained only fourteen white Virginians. Putting it another way, fifty-four[2] out of the one hundred and five members of the Convention, were the incomers from the North and the negroes.[3] The Convention was thus controlled by an element entirely opposed to the interests of the best people of the State, and they (the whites) were very violent in their denunciations of the Convention[4] and its President, Judge J. C. Underwood, who was thoroughly hated by the Virginia people.

In this Convention the question of a basis of representation had assumed a different aspect. There was no longer any Western Virginia to fear, no slave property to protect by keeping the government in the hands of Eastern Virginia; but it now became a question of white or negro domination in the State, whether the whites or the negroes should control the General Assembly. Some had no fears provided all the whites were given the right of suffrage, and then it became simply a question of party rule. The native Virginians, those who had fought for what they considered their rights, were apprehensive lest the Northern incomers with a few native whites by means of the negro vote would rule the State. In short,

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[1] *Dispatch*, April 10, 1868.

[2] At first sight one would think that, since there were 33 Northern incomers and 24 negroes, this element would be 57 instead of 54; but the facts in the case are that there were 30 non-native whites, 3 non-native negroes, and 21 native-born negroes.

[3] The Republican leaders were Underwood, Hunnicutt, Hawxhurst and Allan. The negro leaders were Lewis Lindsay and Dr. Sam Bayne. The speeches of the negroes are amusing and the English rich. They were a great source of annoyance to the white Republicans and of amusement to the Democrats or Conservatives. Dr. Bayne was so irrepressible that on one occasion a motion was made not to allow him to speak more than five times a day on one subject. (*Dispatch*, March 25, 1868.) On another occasion, J. C. Gibson, a Conservative, who was occupying the Chair in the Committee of the Whole, called Dr. Bayne to the Chair, much to the discomfort of the Republicans. (*Dispatch*, April 2, 1868.)

[4] *Dispatch* (Dec. 3, 1867) called the Convention a farce.

the question was whether the Democratic party, composed of the great mass of whites, or the Republican party (then termed Radical), composed chiefly of negroes and Northern incomers, should govern the State.

The Convention referred the question of a basis of representation and the apportionment to a special committee. Two reports were made, a majority and a minority report.[1] Neither report proposed a fixed basis to be embodied in the constitution, but differed in the number of members for each house and the way in which they should be apportioned.

The majority report, which was the Republican plan, proposed a House of Delegates of one hundred and thirty-eight, and a Senate of forty-two elected from thirty-nine senatorial districts. The minority report (the Democratic plan) favored a House of Delegates of eighty-four and a Senate of twenty-five. The majority report made the apportionment on the voters registered under the Reconstruction Acts of 1867, while the minority report took the census of 1860. The majority report was adopted by the Convention with some changes, so it alone will be discussed here. The Senate was apportioned at the ratio of one senator for every 5,400 voters. The House of Delegates was apportioned in a more peculiar fashion, to be a "compromise between population and counties." To quote the report: "The method adopted in allotting the members of the House of Delegates was to give one delegate to every 1800 voters, and, where the fraction over in a county exceeded nine hundred voters, to give another delegate, and to every county in which the number of voters was between nine and eighteen hundred, a delegate each. After making this allotment, it was found that nine counties, having less than nine hundred, were so situated that they could not be formed into suitable districts, and it was thought best to give each a delegate." The apportionment made by the Committee according to this

[1] Reports in *Documents of Convention* (1867–68), pp. 270–275.

scheme was highly favorable to the Republicans, but, as modified and adopted by the Convention, was still more so.

The apportionment was a gerrymander in the following instances:

(1). There were fifteen counties with less than 900 voters. Of these nine were certainly Democratic. The others had such a large colored vote that it was probable that they would be Republican. The apportionment was so made that the *six* Republican counties would elect *six* delegates, while the *nine* Democratic counties would elect only *six*.[1]

(2). The Republicans were benefited by making the House of Delegates so large that the small counties could have one delegate each. Mr. Hawxhurst, Chairman of the Committee on Representation, admitted in a speech that the House of Delegates was made large for that purpose, as most of the small counties with less than 1800 voters were Republican.[2]

(3). The Committee on Representation reported two delegates for Henrico County, and six for Richmond City. But a new registration in Richmond was completed just before the Convention had finished its labors, and it was seen that the

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[1] The counties were King George, Lancaster, Middlesex, New Kent, Warwick, James City, Bland, Greene, Warren, Highland, Bath, Alleghany, Craig, Buchanan and Wise. The first six were Republican. Of course this was calculated on the basis of the registered voters of 1867, and on the expectation that many of the whites would be disfranchised. But when President Grant allowed the people to vote separately on the disfranchising clause of the constitution, and it was rejected, some of these became Democratic. Bland, Greene and Warren, Democratic counties, were given a delegate each. Bath and Highland, Buchanan and Wise, Craig and Alleghany, were made districts to elect three delegates. Cf. List of counties with number of registered voters (white and colored), *Documents of Convention*, 1867–68, p. 52; Report of Committee on Representation, *Documents*, p. 271, and Constitution, *Code of Va.* (1873), p. 76. Warwick was afterwards put into a district with Elizabeth City, but they were given two delegates, and, since Elizabeth City had a colored majority of 1,224, it only made Republican success surer.

[2] See Hawxhurst's Remarks in the Convention, *Dispatch*, March 25, 1868; and *Documents*, p. 51.

whites would probably be able to control the city; and, since the colored voters in Henrico had a majority of 650, the two were made into one district and given eight delegates.[1]

(4). The Committee on Representation reported in favor of one senator from Henrico, and two from Richmond; but, when these two were made into one district to elect delegates, they were also put into one senatorial district to elect three senators, thus giving the control of all the representatives for Richmond to the colored voters of Henrico.[2]

(5). The Committee on Representation reported two delegates for Chesterfield and one for Powhatan. Chesterfield was a doubtful county; but Powhatan was largely Republican, the colored voters having a majority of 722. The Convention made these two counties into one district, electing three delegates.[3]

With representation thus apportioned,[4] and without any basis for future apportionments,[5] the constitution was adopted by the Convention. The whole system of representation was entirely unfavorable to the whites. The result was that the citizens of Virginia were urged to do their best to reject the

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[1] Registered voters in Richmond in 1867 were, whites, 5,571; negroes, 6,284; in 1868, whites, 6,571; negroes, 6,607. Cf. *Documents*, pp, 52, 271; *Code of Va.* (1873), p. 76, and *Dispatch*, March 16, April 3, 4, 20, 1868.

[2] *Cf. Documents*, p. 51, 52, 271; *Code of Va.* (1873), p. 78; *Dispatch*, March 16, April 3, 4, 20, 1868.

[3] *Cf. Documents*, p. 51, 52, 271; *Code of Va.* (1873), p. 76.

The accusation was also brought that taking the registration of 1867, by which so many whites were disfranchised, instead of the census of 1860 was to give larger representation to the counties having a large colored population. (*Dispatch*, March 23, 1868.)

[4] The Convention made one change in the report of the committee in regard to the Senate. Instead of 39 districts and 42 senators, the number of districts was made 40, and senators, 43. See Constitution: *Code of Va.* (1873), pp. 78, 79.

[5] The constitution provided that reapportionments should be made by the first sessions of the General Assembly after every census, but did not state that the population must be the basis of the reapportionments. (Constitution: *Code of Va.*, 1873, p. 79.)

constitution,[1] and it is probable that a large vote would have been polled against the constitution had it been immediately submitted to the people. However, by a proclamation of General Schofield, it was announced that no elections would be held, as Congress had made no appropriations to defray the expenses.[2] April 10, 1869, Congress passed an act to have the constitution submitted to the qualified voters.[3] The act provided that President Grant should designate the time for the elections, and might also set apart such clauses of the constitution as he saw fit, to be voted on separately. By far the most objectionable features of the constitution were the disfranchising clause[4] and the "ironclad" oath.[5] By Grant's proclamation[6] these two clauses were submitted separately to the voters, and rejected,[7] whereas the rest of the constitution was ratified by an almost unanimous vote, July 6, 1869.

The apportionment of representation as embodied in the constitution lasted only two years. In 1871, the General

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[1] The Democratic members of the Convention issued an address pointing out the defects of the constitution (representation being one), and urged the whites to vote for rejection. (*Dispatch*, April 20, 1868.)

[2] *Dispatch*, April 5, 1868. [3] *Code of Va.* (1873), p. 26.

[4] The disfranchising clause had been put into the constitution in order to keep the government, if possible, in the hands of the Northern incomers and negroes. Schofield went into the Convention in 1868, and tried to persuade it to remove this clause. He was hissed and called "King Schofield" by the Republicans and negroes. (*Dispatch*, April 18, 1868.) This clause disfranchised everyone who had been an officer, Federal, State or County, previous to or during the war and had afterwards aided in the "rebellion." See *Code of Va.* (1873), p. 26.

[5] Schofield had also opposed this. It provided that every officer hereafter elected should swear that he had never voluntarily borne arms against the United States. (*Code of Va.*, 1873, p. 28.) This was a Republican measure to keep the best out of office, as only negroes, Northern incomers, and a few others would be eligible.

[6] *Code of Va.* (1873), pp. 26–27.

[7] The vote on the disfranchising clause was 84,410 for, and 124,360 against, and on the "ironclad oath" 83,458 for, and 124,715 against; for the rest of the constitution the vote for ratification was 210,285, and for rejection, 9,136.

Assembly made a reapportionment.[1] The House of Delegates was reduced from one hundred and thirty-eight to one hundred and thirty-two. The number of the Senate, forty-three, remained unchanged.[2] The gerrymander of the constitution was broken up. Richmond and Henrico were separated for the election of delegates, Richmond being given five and Henrico two, but they continued to form a senatorial district electing three senators. Chesterfield and Powhatan counties were no longer to be one district for the election of delegates, but Chesterfield was to elect two and Powhatan one delegate. The districts of Alleghany and Craig, of Highland and Bath, and of Buchanan and Wise, each electing one delegate remained unchanged, but Charles City and New Kent, and York and James City were made districts electing one delegate each, while the district of Warwick and Elizabeth City was reduced from two delegates to one.[3]

The constitution provided for annual sessions of the General Assembly, although the delegates were elected biennially, and the senators for four years, half of the districts electing every two years.[4] In 1875, an amendment to the constitution was suggested by the General Assembly, reapproved by the same

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[1] See *Code of Va.* (1873), pp. 79, 135. The plan of this reapportionment was to give as near as possible one delegate to every 12,000 persons, and one senator to every 36,000. (*Dispatch*, Jan. 31, 1871.)

[2] The power resided in the General Assembly to change the numbers since the constitution gave the right to reapportion, and did not definitely fix the number for each House. See Constitution: *Code of Va.* (1873), pp. 75, 79.

[3] Cf. Apportionments in *Code of Va.* (1873), pp. 76–79, and 134–137. The other changes were one delegate less to Pittsylvania, and to Norfolk County and Portsmouth. In the Senate the districts were differently arranged and numbered. Under the constitution the plan was that all the senatorial districts bearing odd numbers should elect at one time, and all with even numbers at another. By the reapportionment they were so arranged that all districts numbered from one to twenty inclusive should elect at one time, and all from twenty-one to forty inclusive at another. *Code of Va.* (1873), p. 137.

[4] Constitution: *Code* (1873), pp. 75, 78, 80.

body in 1876, and then ratified by the vote of the people.[1] By this amendment the General Assembly was to meet biennially, unless specially called by the Governor.

The members of the General Assembly were to be elected as previously. The House of Delegates was to be composed of not more than one hundred nor less than ninety, and the Senate of not more than forty nor less than thirty-three. Another reapportionment was to be made at some time previous to 1879 and again in 1891, and every ten years thereafter.

February 17, 1878, the General Assembly, in accordance with this provision, reapportioned representation throughout the State, giving one hundred delegates to the House and dividing the State into thirty-nine senatorial districts, each electing one senator except the thirty-fifth district, composed of Richmond and Henrico, which was to elect two senators.[2] When this apportionment was made, the population was largely guesswork, so the principle used was somewhat of a reversion to the old county system of representation. The plan was that "representation should, when it was possible, be given to small counties even at the expense of the larger, so that every distinct community within limits should have its voice heard in the Legislature."[3] An attempt was made to revert almost entirely to the old county system. A bill was introduced to give four delegates to Richmond, and to take delegates from all counties and cities having more than one, and so to distribute them as to give all the small counties, with a few exceptions, one delegate each. This was defeated, as it gave too much power to the minority, it being estimated that

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[1] *Acts of Assembly* (1874–75), pp. 399–403, and *Acts* (1875–76), pp. 82–93. For this method of amending the constitution, see Constitution: *Code* (1873), p. 100.

[2] *Acts of Assembly* (1877–78), pp. 111–114.

[3] Report of Committee: *Dispatch*, Feb. 18, 1878. The committee said that, as far as practicable, they desired to get back to the principles of the Constitution of 1776.

one-third of the population would elect at least one-half of the delegates.[1]

In 1891, another reapportionment was made. The number of members for both houses remained the same, but the districts were differently arranged in order to meet the rapid increase in population in some sections of the State.[2] The basis taken in allotting representation was the population according to the census of 1890; one senator for every 40,000 persons, and one delegate for every 16,000, but this was considerably modified by county limits.[3]

A glance at the history of representation in Virginia shows that, as much as the *basis question* has been agitated, there has never been a basis of representation except in the Constitution of 1776, which made the basis for the House of Delegates two from each county, while no basis was adopted for the Senate. The present constitution provides for reapportionments after every census, but does not state that the population is to be the basis. The whole power is in the hands of the Legislature, and thus opportunities are afforded for fraud. Any political party in power at the time of a reapportionment has the power to adopt any basis for that reapportionment, and to gerrymander the State for party aggrandizement.[4]

Although the basis question in Virginia has lost its interest since the civil war and the abolition of slavery, yet it seems best that every constitution should embody some basis of representation. To some, population as a basis seems so generally recognized, that a constitutional basis appears useless. By no means is population the general basis for State legislatures. In the whole of the New England, there is not a State in which the present system of representation is based entirely on popu-

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[1] *Dispatch*, Feb. 19, 1878.

[2] See *Acts of Assembly* (1891–93), pp. 56–60.

[3] *The Times*, Dec. 11, 1891.

[4] That the Democrats had such an idea in 1891 is shown by the remarks of some of the Democratic leaders in the halls of the Legislature at the time of the reapportionment. See *Dispatch*, Dec. 20, 1891, and *Times*, Dec. 20, 22, 23, 1891.

lation. The large towns in some instances have no greater number of representatives than the small ones, while, in other instances, a maximum number of representatives is established, and it matters not how large the population of any town may be, this maximum cannot be exceeded.[1] In Maryland, Baltimore is not represented in proportion to its population.

In Virginia, some improvement might be made in regard to the election districts for both the Senate and the House of Delegates. It often occurs that the larger county or counties in the districts secure all the representatives to the detriment of the smaller counties. In county relationship the minority should be recognized as well as the majority, and, therefore, some form of proportional representation between the counties in election districts should be adopted. The principle of rotation between counties in the same district, as seen in the West Virginia constitution, is good.[2] In Massachusetts a well established custom determines that there shall be "rotation within the district so that each town shall have its turn in sending as representative one of its own residents once in every few years."[3] Each county in Virginia, with a few exceptions, has its own peculiar interests, and it is nothing but just and proper that each should have a constitutional right to send to the General Assembly, at stated periods, a representative from its own limits.

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[1] G. H. Haynes: Representation in the New England Legislatures, *Annals of Am. Academy;* Sept., 1895.

[2] *Supra*, p. 72; Note 4.

[3] G. H. Haynes: *Annals of Am. Academy;* Sept., 1895.